Law, Social Movements, and the Political Economy of Domestic Violence

DEBORAH M. WEISSMAN*

This article uses the occasion of the 2013 Reauthorization of the Violence Against Women Act (VAWA) to review the circumstances by which legal theory and social movement discourse have circumscribed the scope of VAWA and the dominant approach to domestic violence. This article seeks to explore the relationship between domestic violence advocacy and feminist theory, which has functioned as "the ideological reflection of one's own place in society" with insufficient attention to superstructures. Additionally, it argues for a reexamination of the current domestic violence/criminal justice paradigm and calls for the consideration of economic uncertainty and inequality as a context for gender-based violence. As an epistemology, domestic violence scholarship has fallen behind other fields of study due to its failure to address the structural context of gender-based violence. This article proposes a redefinition of the parameters of domestic violence law and presents new (and provocative) ways to think about law-related interventions to ameliorate gender violence.

INTRODUCTION

The year 2013 marks nearly two decades since the enactment of the historic Violence Against Women Act (VAWA).[1] The passage of VAWA in 1994 signaled Congressional recognition of the relationship between gender-based violence and women's equality, and more: VAWA's passage acknowledged that state legal structures had failed to provide an adequate remedy to battered women. VAWA authorized victims of gender-based violence to bring civil rights actions in federal judicial forums—that is, to seek remedy in forums traditionally "reserved for issues where important national interests predominate."[2]

The reauthorization of VAWA in 2013 provides an occasion to reexamine the legal premises that have shaped and continue to inform conventional

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* Reef C. Ivey II Distinguished Research Professor of Law, University of North Carolina School of Law. The author wishes to express gratitude to Donna Coker and Julie Goldscheid for their thoughtful insights and comments. The author gratefully acknowledges Louis Pérez, Jr. for his support and comments, as well as the participants of the Yale Law School Violence Against Women Reauthorization Conference.

1. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 *1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.) [hereinafter VAWA or the Act].

2. William H. Rehnquist, Chief Justice's 1991 Year-End Report on the Federal Judiciary, *reprinted in* 138 CONG. REC. 530, 582 (1992). The civil rights remedy was subsequently struck down as unconstitutional in United States v. Morrison, 529 U.S. 598 (2000). *See infra* note 4 and accompanying text.

wisdom about the nature of and responses to domestic violence.[3] Notably, this civil rights remedy – designed to address gender-based violence as a form of discrimination and considered to be essential to eradicating domestic violence was nullified in *United States v Morrison*.[4] The provisions that subsequently remain the most "usable"—and certainly the most available—favor the law enforcement and prosecutorial strategies funded by the Act.[5]

VAWA 2013 extends funding for important victim services. It also includes new reforms relating to the jurisdictional complexities important for Native American victims of gender-based violence, whose circumstances have been neglected as a result of historical matters of sovereignty and conflicting federal and state statutes.[6] However, VAWA reauthorization will no doubt remain very much a product of the prevailing criminal justice paradigm from which the original statute emerged. It is to this issue and its consequences that this article responds.

Despite mounting evidence that points to deviant behavior—including domestic violence—as a socially-conditioned outcome, Congress failed to reauthorize a version of VAWA that responds to structural theories of criminal behavior. When proponents of VAWA address structural theories, the discourse has been limited principally to the failure of law enforcement agencies to arrest and of the courts to punish perpetrators. The underlying premise that appears to drive the current legal response is consistent with Rational Choice Theory: criminals make rational choices among alternative courses of actions (i.e., "crime is a decision, not a disease").[7] Noticeably missing from discussions about domestic violence are social theories that focus on the macro political conditions and economic circumstances that contribute to crime, including domestic violence, and the development of social policies that focus on poverty prevention, economic assistance, and the distribution of services as a response.[8] Under current economic conditions, including chronic under- and unemployment, declining wages, and diminishing benefits, consideration of these circumstances is vital to a fuller understanding of domestic violence.

Of course, continued support for criminal laws as a response to domestic

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3. Violence Against Women Act of 2013, Pub. L. No. 113-4 (2013, *available at* http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf.

4. 529 U.S. 598 (2000).

5. The Act created new federal crimes and enhanced penalties, including federal felonies for acts of interstate domestic violence as well as interstate violations of protective orders. 18 U.S.C. §§ 2262, 2264. The Act also increased funding for criminal justice responses and services for crime victims tied to law enforcement. 42 U.S.C. § 3796gg. *See* Margaret B. Drew & Marilu E. Gresens, *Denying Choice of Forum: An Interference by the Massachusetts Trial Court with Domestic Violence Victims' Rights and Safety*, 43 SUFFOLK U. L. REV. 293, 322 (2010) (noting that the function of criminal courts in domestic violence cases are enhanced as a result of training and funding through VAWA); Jane K. Stoever, *Freedom from Violence: Using the Stages of Change Model To Realize the Promise of Civil Protection Order*, 72 OHIO ST. L.J. 303, 305 (2011).

6. *See* Violence Against Women Act of 2013, *supra* note 3, TITLE IX—SAFETY FOR INDIAN WOMEN (2013)

7. DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 198 (2001); John Hagan, *Introduction: Crime in Social and Legal Context*, 27 LAW & SOC'Y REV. 255, 255 (1993) (arguing the ethos of individualism focuses on crime as a function of the individual).

8. GARLAND, *supra* note 7.

violence is not without an internal logic. Domestic violence advocates have long recognized that criminal justice promises immediate results, both politically and in terms of the urgent need to bring about a cessation of violence. By contrast, directing legal attention to the systemic sources of violence requires a daunting long-term process. In fact, the legal system rarely remedies the structural inequality and socioeconomic problems that contribute to criminal behavior.[9] As Martha Mahoney observes, "[t]he vocabulary of American law is not easily adapted to discussing class."[10] This is particularly true in the realm of legal responses to domestic violence, in which advocates have avoided the demonstrated relationship of poverty and domestic violence, and have remained on the sidelines of legislative debates affecting social welfare policies, despite the impact of such policies on domestic violence victims.[11] While understandable, the commonly-held assumption that gender-based violence is unrelated to the political economy discourages efforts to pursue law-related structural reforms and thus hinders the development of legal responses to issues of economic inequality.

This article examines the ways that both legal theory and social movement discourse circumscribe the scope of VAWA and the dominant approach to domestic violence. It seeks to explore the relationship between domestic violence advocacy and feminist theory that has functioned as "the ideological reflection of one's own place in society" with insufficient attention to superstructures.[12] This article argues for the re-examination of the current domestic violence/criminal justice paradigm and calls for the consideration of economic uncertainty and inequality as a context for gender-based violence. And it suggests new strategies to address the socioeconomic complexities of domestic violence, without which the domestic violence movement risks failing to achieve its desired goals.

This article is organized in three parts. Part I reviews the processes through which VAWA separated domestic violence from the context of political economy, and describes how legislative provisions and legal interpretations narrowed the scope of the relief that could have otherwise been provided by the statute. It then examines the ways in which the discourse of legal interventions

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9. *See* Stephen Loffredo, *Poverty, Inequality, and Class in the Structural Constitutional Law Course*, 34 FORDHAM URB. L.J. 1239, 1243–44 (2007) (observing that liberal constitutional scholars posit that "poverty and class inequality—and their direct and collateral impacts—lie beyond the Constitution's cognizance or concern").

10. Martha R. Mahoney, *What's Left of Solidarity? Reflections on Law, Race, and Labor History*, 57 BUFF. L. REV. 1515, 1517 (2009); *see* Jeremy Waldron, *Socioeconomic Rights and Theories of Justice*, 48 SAN DIEGO L. REV. 773, 776 (2011) (noting that within the realm of theories of justice, socioeconomic rights are often attacked by those who would privilege property rights and the market).

11. Deborah M. Weissman, *The Personal Is Political—and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 402 (2007); Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 LAW & POL'Y 205, 208, 223 (1997).

12. Sonja Buckel & Andreas Fischer-Lescano, *Gramsci Reconsidered: Hegemony in Global Law*, 22 LEIDEN J. INT'L L. 437, 441 (2009). Feminism is a broad term that covers a range of tendencies, branches, and different ideological strands. Here, I refer to feminism as an "exclusionary practice and ideology" that emphasizes concern with the public-private divide and opposition to patriarchy while tending to avoid issues pertaining to race, ethnicity, or class. *See* Amalia Sa'ar, *Postcolonial Feminism, the Politics of Identification, and the Liberal Bargain*, 19 GENDER & SOC'Y 680, 686 (2005) (identifying a type of feminism as "well positioned vis-à-vis the liberal order").

has been shaped by the politics of what Angela Harris calls "unmodified feminism," as well as the politics of the domestic violence movement.[13] Part I argues that feminism's essentialist preoccupations with matters of identity, together with the domestic violence movement's inattention to poverty and economic inequality, facilitated the ascendancy of the domestic violence/criminal justice paradigm.

Part II examines the relationship of economic uncertainty and inequality with domestic violence. It argues that as an epistemology, domestic violence scholarship has fallen behind other fields of study due to the scholarship's failure to address the structural context of gender-based violence.

Part III proposes a redefinition of the parameters of domestic violence law and presents new ways to think about criminal justice interventions. It challenges as unduly facile the prevailing view that the most effective response to domestic violence is a criminal one. The failure to address the relationship between the political economy and domestic violence casts domestic violence as idiosyncratic and aberrant rather than social and structural.[14] In making this point, Part III reviews the development of veterans' courts, which operate under the assumption that criminal behavior originates in a structural causal setting that transcends individual agency. These courts serve as an alternative example of criminal justice intervention in which sociological and structural explanations of behavior are relevant to the outcome and the courts offer the possibility for reforms in domestic violence cases. Part III also considers strategies that extend beyond the criminal justice system and commends several legal projects, including interventions such as community benefits agreements (CBAs). The prototypical CBA involves community groups summoning their collective strength to negotiate with corporations and municipalities to ensure that development projects benefit local and low-income residents. These agreements are relevant for advocates seeking to address the structural determinants of violence, including domestic violence.[15] CBAs may constrain or redistribute capital and, at the same time, can address issues specifically pertaining to domestic violence. This article concludes by explaining that questioning the current "practice" of VAWA does not imply a need to nullify existing analyses and approaches but rather, suggests the benefits of offering multiple perspectives.

The relationship between individual harms and social structures is complex and requires consideration of multifaceted strategies. The framework proposed in this article may stand as a challenge to the prevailing approaches to domestic

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13. *See* Angela Harris, *Race Essentialism in Feminist Legal Theory*, *in* CRITICAL RACE FEMINISM 34, 37, 39 (Adrienne Katherine Wing ed., 2003) (critiquing Catherine MacKinnon's "dominance theory" of feminism which holds itself out as a "total" theory); *see supra* note 12 and accompanying text for further clarification about the use of the term feminism.

14. *See* Glenn C. Loury, *Crime, Inequality and Social Justice*, DAEDALUS, Summer 2010, at 134, 135 (noting the recent failure to consider the complexity between communities and incarceration).

15. *Cf.* Brian D. Feinstein & Ashley Allen, *Community Benefits Agreements with Transit Agencies: Neighborhood Change Along Boston's Rail Lines and a Legal Strategy for Addressing Gentrification*, 38 TRANSP. L.J. 85, 97–98 (2011) (examining in a general context how well-organized community groups can successfully negotiate with developers to improve both the housing and job markets in the community).

violence. This critique must also be distinguished from opposition to the reauthorization of VAWA because the new statute affords better protection and services to victims of same-sex relationships, or because of allegations that female victims have free rein to make untested allegations against male perpetrators.[16] But efforts to address domestic violence without consideration of the broader socioeconomic circumstances are perforce doomed to address only the consequences, not the cause.

I. LAW AS SOCIAL ACTION, SOCIAL ACTION AS LAW

VAWA evolved within a dynamic interplay of law and social discourse in which the phenomenon of gender-based violence has been decontexualized from any useful political economic theoretical framework.[17] Despite its auspicious beginnings, as evidenced by Congressional fact-finding on the relationship between domestic violence and the national economy, the implementation of VAWA detached domestic violence from economic circumstances. Legal developments have influenced and been influenced by the prevailing practice of identifying domestic violence as a phenomenon unrelated to political economic structures.[18] These developments have facilitated the ascendency of criminal law responses to domestic violence and leave unexplained—and thus unaddressed—the complex determinants of the domestic violence, including the significant economic transformations that occurred throughout the United States.

A. VAWA and the Law: Rendering Invisible the Economic

In 1994, Congress enacted VAWA, which is generally recognized as the most comprehensive federal effort to address gender-based crimes. VAWA reframed the issue of the domestic violence narrative in two important ways: gender-based violence as a fundamental civil rights issue, and domestic violence as a cause of economic impairment. In an effort to preempt the anticipated challenge to the Act's civil rights remedy, witnesses before Congress provided ample evidence to document the failure of the government to respond to violence against women and to establish the nexus between violence against women and economic concerns. The civil rights remedy was inscribed in the

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16. *See*, *e.g.*, Amanda Terkel, *Violence Against Women Act Becomes a Partisan Issue*, HUFFINGTON POST, Feb. 14, 2012, http://www.huffingtonpost.com/2012/02/14/violence-against-women-act_n_1273097.html?ref=politics (noting opposition to the VAWA bill because of enhanced provisions on behalf of LGBTQ persons); *Objections to Reauthorizing the Violence Against Women Act*, DIANE REHM SHOW (Feb. 13, 2012), http://thedianerehmshow.org/shows/2012-02-13/objections-reauthorizing-violence-against-women-act/transcript ("[W]omen who are in situations that they won't get out of find a ready ally in VAWA to help them get out of a situation where there might not be abuse involved."); *see infra* notes 37–38 and accompanying text.

17. June Starr & Jane F. Collier, *Introduction*, *in* HISTORY AND POWER IN THE STUDY OF LAW: NEW DIRECTIONS IN LEGAL ANTHROPOLOGY 1, 6 (Starr & Collier eds., 1989) (describing critical legal studies' concern with the mutual construction of law and social order).

18. 157 CONG. REC. H7735, 7337 (daily ed. Nov. 4, 2011), *available at* http://www.gpo.gov/fdsys/pkg/CREC-2011-11-04/pdf/CREC-2011-11-04-pt1-PgH7337-2.pdf#page=1 (statement of Rep. Himes) (quoting the National Coalition Against Domestic Violence that domestic violence is "a crime which knows no class boundaries . . . ."); *see* Rebecca J. Cook, *Structures of Discrimination*, 28 MACALESTER INT'L 33, 34 (2011).

Commerce Clause based on an understanding that domestic violence was intricately related to economic issues and that individual victims as well as the national economy suffered economic harm.[19] The Act introduced significant measures toward ameliorating the multiple consequences of domestic violence, including hotlines, shelter programs, and other important services.

VAWA's 1994 civil rights remedy was short-lived. In 2000, the Supreme Court declared that portion of the Act unconstitutional and beyond the reach of the Commerce Clause in *United States v. Morrison*.[20] The Act, considered contentious because of the civil rights remedy, was never voted on as a stand-alone bill.[21] Instead, it was enacted as Title IV of the Violent Crime Control and Law Enforcement Act and part of an Omnibus Crime bill[22]—the largest crime bill in U.S. history,[23] described by some scholars as "draconian."[24] Once the civil rights remedy was nullified, VAWA developed into a statute primarily focused on criminal prosecution.

Furthermore, subsequent reauthorizations continued to expand VAWA's criminal justice strategy. The principal purpose of the 2000 VAWA reauthorization, which added new domestic violence-related crimes,[25] was to advance the goal of successfully prosecuting batterers.[26] While the 2000 Act authorized an important new remedy for immigrant women victims of crime, the stated goal of the new nonimmigrant visa classification was to strengthen the ability of law enforcement agencies to prosecute crimes.[27] Moreover, although

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19. *See generally Domestic Violence: Not Just a Family Matter: Hearing Before the Subcomm. on Crime & Criminal Justice of the H. Comm. on the Judiciary*, 103d Cong. (1994); *Crimes of Violence Motivated by Gender: Hearing Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary*, 103d Cong. (1993); *Violence Against Women: Fighting the Fear: Hearing Before the S. Comm. on the Judiciary*, 103d Cong. (1993); *Violent Crimes Against Women: Hearing Before the S. Comm. on the Judiciary*, 103d Cong. (1993); *Hearing on Domestic Violence: Hearing Before the S. Comm. on the Judiciary*, 103d Cong. (1993); *Violence Against Women: Hearing Before the Subcomm. on Crime & Criminal Justice of the H. Comm. on the Judiciary*, 102d Cong. (1992); *Violence Against Women: Victims of the System: Hearing Before the S. Comm. on the Judiciary*, 102d Cong. (1991); *Women and Violence: Hearings Before the S. Comm. on the Judiciary*, 101st Cong. (1990); *Domestic Violence: Terrorism in the Home: Hearing Before the Subcomm. on Children, Family, Drugs, & Alcoholism of the S. Comm. on Labor & Human Resources*, 101st Cong. (1990). For a useful examination of the history of VAWA, see generally Victoria F. Nourse, *Where Violence, Relationship, and Equality Meet: The Violence Against Women Act's Civil Rights Remedy*, 11 WIS. WOMEN'S L.J. 1 (1996).

20. 529 U.S. 598, 601–02 (2000).

21. Nourse, *supra* note 19, at 33–34 (noting that as a strategic matter, VAWA was never voted on by the Senate but instead was folded into the crime bill).

22. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994).

23. Mayte Santacruz Benavidez, *Learning from the Recent Interpretation of INA Section 245(a): Factors to Consider When Interpreting Immigration Law*, 96 CAL. L. REV. 1603, 1605 (2008).

24. Marie Gottschalk, *Dismantling The Carceral State: The Future Of Penal Policy Reform*, 84 TEX. L. REV. 1693, 1721 (2006). Others have simply acknowledged that the Act was an endorsement by the federal government of the criminalization of domestic violence. Cheryl Hanna, *The Paradox of Hope: the Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1516 (1998).

25. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, § 1513(a), 114 Stat. 1464, 1533.

26. 42 U.S.C. § 3796gg (identifying funding for training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women).

27. GARRINE P. LANEY, VIOLENCE AGAINST WOMEN ACT: HISTORY AND FEDERAL FUNDING 5

the 2000 reauthorization increased funding for services, legal aid organizations receiving VAWA funds were required to inform state and local law enforcement about their work as a means to expand the capacity of the criminal justice system.[28] The 2005 reauthorization bill provided new law enforcement tools, most notably the DNA Fingerprint Act, that were described as a "stunning extension of government power,"[29] and that have raised concerns that poor men and especially men of color may be "catalogued" for purposes of wrongful intrusion by the state.[30] VAWA funds—some of which came from savings accrued by reductions in the federal workforce[31]—have been allocated primarily and increasingly to police, prosecutors, and funding for jails.[32]

VAWA 2013, like the prior two reauthorizations, continues much needed funding for a range of services for victims of gender-based violence.[33] Notably, the Act grants clear jurisdictional authority over acts of domestic violence that occur on tribal lands to tribal courts. VAWA 2013 expands important services to youth and supports sexual assault victims who suffer delays in criminal rape investigations due to backlogs in the inventorying of rape kits.[34] The Act also includes a non-discrimination grant conditions clause that includes sexual orientation and seeks to clarify and improve protections for battered immigrants.[35] These are critical initiatives to reduce and ameliorate the consequences of domestic violence.

The "weight" of the Act, however, continues to favor a criminal justice response to domestic violence. The vast portion of the funding is allocated to police and prosecutors to encourage arrests and prosecution.[36] Indeed, much of

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(2005), *available at* http://www.ilw.com/immigrationdaily/news/2005,0802-crs.pdf.

28. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, § 1201(d)(3), 114 Stat. 1464, 1505.

29. Dorothy Roberts, *Collateral Consequences, Genetic Surveillance, and the New Biopolitics of Race*, 54 HOW. L.J. 567, 571–72 (2011).

30. *See* MS. FOUNDATION FOR WOMEN, SAFETY AND JUSTICE FOR ALL: EXAMINING THE RELATIONSHIP BETWEEN THE WOMEN'S ANTI-VIOLENCE MOVEMENT AND THE CRIMINAL LEGAL SYSTEM 13 (2003).

31. Nourse, *supra* note 19, at 33–34.

32. GARRINE P. LANEY, VIOLENCE AGAINST WOMEN ACT: HISTORY AND FEDERAL FUNDING 10-14 (2010), *available at* http://digitalcommons.ilr.cornell.edu/key_workplace/711/; LANEY, *supra* note 27, at 11–12; *see* Lisa R. Pruitt, *Gender, Geography & Rural Justice*, 23 BERKELEY J. GENDER L. & JUST. 338, 388 (2008) ("[F]unding under [VAWA] continues to support programs aimed at reducing the incidence of domestic violence and improving its investigation and prosecution.").

33. *See generally* Violence Against Women Reauthorization Act of 2013, *supra* note 3; Section By Section Analysis, *available at* http://www.rules.house.gov/Media/file/PDF_113_1/PDF/113-S47-sxs.pdf.

34. *Id.* at Title I, Sec. 1002.

35. *Id.* at Title VIII, Sec. 3(b)(13)(A). The provisions to prohibit discrimination against gays and lesbians and improved remedies for immigrants were met with significant Senate Republican opposition. *See* Editorial, *Republicans Retreat on Domestic Violence*, N.Y. TIMES, Feb. 10, 2012, at A26.

36. *See The Continued Importance of the Violence Against Women Act: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 2 (statement of Sen. Patrick J. Leahy); *see* Caroline Bettinger-Lopez et al., *VAWA Is Not Enough: Academics Speak Out About VAWA*, FEMINIST LAW PROFESSORS (Feb. 27, 2012), http://www.feministlawprofessors.com/2012/02/academics-speak-about-vawa-reauthorization/ (analyzing VAWA 2012 funding and noting that criminal justice strategies funds were approximately three times greater than civil legal assistance allocations, housing, and training for family court judges combined).

the congressional testimony offered in support of the 2013 reauthorization of VAWA privileged criminal justice remedies to domestic violence.[37] Certainly some witnesses acknowledged the relationship between economic strain and domestic violence, and in fact confirmed that domestic violence rates increase during times of economic downturn. Nevertheless, almost all testimony prioritized the continued allocation of VAWA funds to enhance the criminal justice system.[38]

The circumstances surrounding past and proposed reiterations of VAWA demonstrate the constitutive power of law and law's ability to construct and limit the categories within which we conceive of domestic violence. The VAWA discourse has been conducted largely in the context of crime and punishment, with little attention to economic matters. At the national level, the Supreme Court in *Morrison* pronounced that "[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity."[39] The Court continued to separate the phenomenon of domestic violence from economic concerns in *Castle Rock v. Gonzales*,[40] in which it determined that battered women lacked any property interest in the enforcement of a protection order—even as property may be defined in the "broad and majestic terms" of *Board of Regents of State Colleges v. Roth*.[41]

Economic considerations have fared no better at the local level. State courts rarely order economic relief in the form of child support and spousal maintenance in domestic violence civil protection order cases, even though state statutes authorize such relief.[42] Tort claims by victims seeking compensatory damages for acts of domestic violence are difficult to sustain because of statutes of limitations and other procedural obstacles, as well as problematic insurance policies that exempt coverage for women who are abused in their homes.[43]

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37. Witnesses argued for additional resources to improve conviction rates and urged the development of new strategies to persuade reluctant victims to avail themselves of the criminal justice system. *Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters: Hearing Before S. Comm. on Indian Affairs*, 112th Cong. 7–9 (2011) (statement of Tom Perrelli, Associate Att'y Gen.) (describing proposed reforms for Native American women); *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases: Hearing Before the Subcomm. On Crime & Drugs of the S. Comm. on the Judiciary*, 111th Cong. 45, 59–61 (statements of Scott Berkowitz, President, RAINN, and Susan B. Carbon, Dir., Office on Violence Against Women).

38. *See The Continued Importance of the Violence Against Women Act: Hearing Before the S. Comm. on the Judiciary*, *supra* note 36, at 34, 40–41, 44–48, 50–51.

39. United States v. Morrison, 529 U.S. 598, 613 (2000).

40. 545 U.S. 748 (2005).

41. 408 U.S. 564, 571 (1972).

42. Douglas L. Yearwood et al., *Exploring Alternatives for Improving Child Support Application Filing Rates Within the Context of Chapter 50B Domestic Violence Protection Order Cases*, 30 CHILD. & YOUTH SERVICES REV. 821, 825 (2008) (noting that judges failed to order child support where requested in seventy-nine percent of the cases); Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 43 (1999) (noting almost half of the domestic violence agencies from across the country report that judges refuse to grant relief such as custody, child support, and other forms of financial relief in domestic violence hearings); *see* REBECCA HALL, ECONOMIC EMPOWERMENT CURRICULUM 13 (noting that Utah judges, although authorized to grant economic relief, either think that they cannot, or choose not to) (training curriculum prepared for Utah's State Domestic Violence Coalition on file with author).

43. MARTHA CHAMALLAS & JENNIFER B. WRIGGINS, THE MEASURE OF INJURY: RACE, GENDER, AND

The scant attention given to economic hardship as a consequence of domestic violence makes it all but impossible for advocates and policy makers to consider economic hardship as a cause of domestic violence.[44] Current views of domestic violence deem irrelevant the political economic circumstances of the perpetrator. "Mainstream" criminal theories understand acts of deviant behavior as deeds of individual volition. Indeed, the legislative recommendations that urge increased arrests and prosecutions rely on theories that have developed fully into articles of faith and are central to prevailing criminal justice orthodoxy—that is, the proposition of criminals as rational actors, engaged in acts of rational choice after weighing the costs and benefits before deciding to engage in criminal acts.[45] Criminal justice remedies predominate, reinforced by the prevailing belief that to punish is to deter.

The point here is not to oppose the reauthorization of VAWA.[46] Rather this article attempts to call attention to historic patterns that serve to sustain a default legal system that makes a solution to the structural basis of domestic violence difficult to obtain. Moreover, these legal developments have influenced the means—and the ends—through which social movements have acted to end domestic violence.

B. Social Movements as Sources of Law

Legal developments are often constitutive of the ways in which social movements develop.[47] But law also responds to and is a result of social movements.[48] Efforts by feminists and the domestic violence movement to challenge prevailing power hierarchies and improve the condition of women through over-reliance on the criminal justice system have, in fact, contributed to a skewed understanding of domestic violence.[49]

The debates about the politics of feminist initiatives to end gender-based violence involve a set of larger issues about feminism that must be historicized and approached through political economic analysis. During the 1970s, the domestic violence advocacy movement emerged within second-wave feminism, identifying with a "fundamental emancipatory promise with its expanded sense of injustice and its structural critique of society."[50] Second-wave feminism

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TORT LAW 3, 73 (2010).

44. *See* Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1, 12 (1999) (setting out the need to recognize oppressive structures in the lives of batterers).

45. *See* Kathleen Ho, *Structural Violence as a Human Rights Violation* 4 ESSEX HUMAN RTS. REV. 1, 2 (2007) (noting that structuralist theories hold that individuals do not make decisions as free agents but rather as embedded in relational structures that shape their actions).

46. The Act was the subject of partisan fighting and has been challenged by all Republican members in the Senate Judiciary Committee because of provisions protecting lesbians, gays, bisexuals, transgendered people, and immigrants. *See* Terkel, *supra* note 16; *see also supra* note 38 and accompanying text.

47. PATRICIA EWICK & SUSAN S. SILBEY, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE 34-35 (1998) (observing that law functions not only "to shape social action but as social action").

48. Menachem Mautner, *Three Approaches to Law and Culture*, 96 CORNELL L. REV. 839, 862 (2011).

49. *See generally* MS. FOUNDATION FOR WOMEN, *supra* note 30.

50. Nancy Fraser, *Feminism, Capitalism and the Cunning of History*, NEW LEFT REV., Mar.-Apr.

promoted an intersectional understanding of oppression that focused on class, race, and sexuality, as well as gender.[51] The original goal of feminist legal theory similarly has been described as an undertaking to "substantively address women's lived inequality, as well as to perpetuate fairness and non-subordination in the world more generally."[52]

Political scientist Nancy Fraser notes that with the subsequent shift of feminism from the structural to the cultural, the politics of identity eclipsed political economic concerns.[53] Other scholars similarly observe that feminist theory abandoned a radical critique at the time of a shift in global economic structures, including outsourcing and globalization, when wealth concentrations grew more extreme and economic inequality increased.[54] They attribute the rise of identity politics to the professionalization and cooptation of feminism, and a failure to conceive of alternatives to capitalism.[55] Fraser posits that as a result of these circumstances, "second-wave feminism has unwittingly provided a key ingredient of the new spirit of neoliberalism."[56] The trope of feminist politics undermined class-based solidarity efforts, failed to challenge the social construction of status categories, and ignored the intersection of identities.[57]

Identity politics served an important purpose as a means of insight about the condition of women, of course. But the emphasis on identity as an organizing politics has produced and widened divisions among marginalized groups, and has further weakened the capacity for broad political alliances. As the scholarly critiques demonstrate, the greater attention paid to "difference" has signaled feminism's retreat from the politics of redistribution in favor of the politics of recognition.[58]

Identity politics have served as the core organizing tool for feminists engaged in the domestic violence movement. That tool created group cohesiveness based on the proposition that all women were at "universal risk" of domestic violence by virtue of being women in a male-privileged society.[59] The

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2009, at 97, 97, 101; Herbert Marcuse, *Marxism and Feminism*, 17 DIFFERENCES 147, 155 (2006) ("Feminism is a revolt against decaying capitalism."); *see also* Wendy Brown, *Women's Studies Unbound: Revolution, Mourning, Politics*, 9 PARALLAX, no. 2, 2003, at 3, 3 (describing feminism as "born of the utopian aspiration").

51. Fraser, *supra* note 50, at 103.

52. Mae C. Quinn, *Feminist Legal Realism*, 35 HARV. J.L. & GENDER 1, 20 (2012) (describing the viewpoint of feminist legal scholars advocating that Legal Feminism should go beyond the academy and seek to transform fundamental political and social values).

53. Fraser, *supra* note 50, at 109; *see also* Mary Bernstein, *Identity Politics*, 31 ANN. REV. SOC. 47, 48 (2005) (identifying the 1990s as a point where identity politics takes distinct form); Wendy Brown, *Feminist Theory and the Frankfurt School: Introduction*, 17 DIFFERENCES 1 (2006).

54. Brown, *supra* note 53, at 3, 7–8 (noting the relationship between the "abandonment" of such theories and the political transformations at the end of the 20th century); *see also* Terry Eagleton, *Indomitable*, LONDON REV. BOOKS, Mar. 3, 2011, at 13.

55. Bernstein *supra* note 53, at 52.

56. Fraser, *supra* note at 50, at 110; Bernstein, *supra* note 53, at 64 (noting that identity politics has been coopted as a result of the commodification of interests and differences).

57. Bernstein, *supra* note 53, at 52, 57.

58. Nancy Fraser & Nancy A. Naples, *To Interpret the World and to Change It: An Interview with Nancy Fraser*, 29 SIGNS 1103, 1112 (2004).

59. Jeffrey Fagan et al., Social and Ecological Risks of Domestic and Non-domestic Violence

very concept of women-as-victims emerged as an identity constructed vis-à-vis a male partner with little attention to economics.[60] Advocates readily advanced the proposition that domestic violence knows no class bounds, fearing that if domestic violence were identified as an issue primarily affecting the poor, there would be scant attention paid and fewer resources allocated to the problem.[61] By constructing the problem as a "classless" one, advocates ignored the relationship between domestic violence and economic circumstances, regardless of evidence to the contrary.[62] Indeed, domestic violence advocates might be described as entering into a "liberal bargain" whereby they sought to accommodate the very ideology that sustains structural inequality.[63]

The invocation of victimhood may have served as an important early means through which to forge a political identity for the domestic violence movement. But the construction of victimhood as a status linked to patriarchy without attention to socioeconomic structures preempted and precluded class solidarities.[64] To put it differently, the personal displaced the political.

Feminism's transition from a movement once concerned with structural inequality in public and private realms to the adoption of law and order strategies as a means to address domestic violence has significantly influenced legal developments. Feminist activists welcomed the efficacy of criminal justice strategies through which to reconfigure the discourse of domestic violence from a matter of private realms to an issue of the public policy. Moreover, the emphasis on criminal law responses and the failure to situate gender-based violence within a broader structural framework occurred precisely at the moment in which social problems associated with economic hardship and social dysfunction passed under the purview of the criminal justice system.[65]

The domestic violence movement has thus been identified with a "punitive, retribution-driven agenda," per the ethos of the culture of the criminal justice system.[66] Attention to socioeconomic factors as causes of domestic violence is all but absent from domestic violence theory and practice. Having emphasized "the wrongs done to women and not the socially produced capacity for women to be wronged, to be victims," feminists have narrowed the scope for addressing structural determinants of gender-based violence.[67]

Against Women in New York City 5, Final Report, Grant 1999-WTVW-0005, National Institute of Justice, U.S. Department of Justice (2003) (reviewing the literature that posited that "all women are equally situated within a patriarchal society, and thus equally likely to be victimized").

60. *Id.*

61. Ralph Henry, *Domestic Violence and the Failures of Welfare Reform: The Role for Work Leave Legislation*, 20 WIS. WOMEN'S L.J. 67, 68 (2005) (citing Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 LAW & POL'Y 205, 224 (1997)).

62. *See* Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 N.Y.U. REV. L. & SOC. CHANGE 281, 287 (describing the process of essentializing battered women across race and class lines); *see supra* note 11 and accompanying text.

63. Sa'ar, *supra* note 12, at 681.

64. Jonathan Simon, *Megan's Law: Crime and Democracy in Late Modern America*, 25 LAW & SOC. INQUIRY 1111, 1131–32, 1137 (2000) (citing WENDY BROWN, STATES OF INJURY (1995)).

65. *See generally* JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR (2007).

66. Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH L. REV. 581, 582 (2009).

67. Brown, *supra* note 53, at 11; *see* Bernstein, *supra* note 53, at 50 (describing concerns related to

Feminism's abandonment of the emancipatory project has profoundly impacted the strategies deployed to address domestic violence in ways previously under-problematized. The consequences of these developments, however, are well known. The criminal justice system often inflicts great harm to women of color, poor women, and immigrant women, and deprives women of agency.[68] New reports suggest that domestic violence statutes may in fact produce over-criminalization outcomes to the detriment of both women and men.[69] Mandatory arrest policies in cases of domestic violence have contributed to increasing arrest rates even outside the context of intimate partner incidents.[70] Perhaps most notably, domestic violence can itself be a collateral consequence of a criminal justice system that emphasizes punishment and imprisonment and thereby further destabilizes communities.[71]

The domestic violence movement has evolved principally into a legal movement embedded within the criminal justice system. But the causes of violence—including gender violence—are varied and complex and indeed often the product of historical and structural conditions.[72] That the domestic violence/criminal justice paradigm fails to conceptualize a social framework with which to understand violence creates potentially pernicious conditions for women. The analyses of legal remedies must account for the relevance of political economy as the context for gender-based violence.

II. PAYING ATTENTION TO CLASS AND INEQUALITY

As issues of gender-based violence moved from the private realm to public concerns, feminist scholarship increasingly emphasized patriarchy as a source of domestic violence. Patriarchy was identified as a system of dominance institutionalized in public realms as a matter of social practice and legal bias in which men as a group dominate women as a group.[73] However, scholars who have studied the effect of structural economic dislocation suggest that a far more

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"demands for group-differentiated citizenship rights"); Kerry Rittich, *Engendering Development/Marketing Equality*, 67 ALB. L. REV. 575, 591 (2003) (arguing that feminism's failure to address economic justice undermines its central argument for women's rights).

68. Weissman, *supra* note 11, at 399–402; Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 852-54 (2001); Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 23 (2004); *see* Hadar Dancig-Rosenberg & Dana Pugach, *Pain, Love, and Voice: The Role of Domestic Violence Victims in Sentencing*, 18 MICH. J. GENDER & L. 423, 469 (2012).

69. Holly Maguigan, *Wading into Professor Schneider's "Murky Middle Ground" Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. U. J. GENDER SOC. POL'Y & L. 427, 442–43 (2003); Alice Ristroph, *Criminal Law in the Shadow of Violence*, 62 ALA. L. REV. 571, 601, 614 (2011) (pointing out that these statutes may subject nonviolent conduct to the proscriptions of penal law enacted to punish violence).

70. David Hirschel et al., *Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions?*, 98 J. CRIM. L. & CRIMINOLOGY 255, 292 (2007).

71. Marie Gottschalk, *The Long Reach of the Carceral State: The Politics of Crime, Mass Imprisonment, and Penal Reform in the United States and Abroad*, 34 LAW & SOC. INQUIRY 439, 443, 451 (2009).

72. Mary R. Jackman, *Violence in Social Life*, 28 ANN. REV. SOC. 387, 400–02, 406–08 (2002).

73. Gwen Hunnicutt, *Varieties of Patriarchy and Violence Against Women: Resurrecting "Patriarchy" as a Theoretical Tool*, 15 VIOLENCE AGAINST WOMEN 553, 553–54 (2009).

complicated set of factors contributes to domestic violence. Domestic violence can no longer be explained in terms of patriarchy or as a system separated from the social structures that reinforce the multiple power relationships of daily life.[74] Other areas of scholarship and advocacy have demonstrated a causal link between grave social harms and the political economy. This Part suggests that the field of domestic violence should be encouraged to do the same.

A. Domestic Violence: Preempting Consideration of the Consequences of the New Economy

Law-and-order proponents have embraced criminalization strategies as the most effective—and legitimate—form of government intervention. These approaches tend to foreclose the possibility of advancing socioeconomic rights.[75] As Bernard Harcourt explains:

> The argument for more severe law and order is joined at the hip with the argument for limited government intervention elsewhere: the legitimacy and competence in the government in the field of crime and punishment goes hand in hand with government incompetence when it comes to "Government jobs, Government housing, Government welfare."[76]

Many domestic violence advocates remain in the thrall of criminal law strategies despite mounting evidence linking the new economy and community distress on the one hand and a rise in domestic violence on the other.[77]

Social science research provides persuasive evidence of the relationship between economic adversity and gender-based violence.[78] Ethnographic studies chronicle the consequences of plant closings through workers' individual narratives, wherein they admit to worsening relationships with spouses and committing acts of violence as a result of loss of work.[79] This body of research reveals the way that declining economic well-being contributes to family distress,

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74. *Id.* at 560 (noting that men's behavior is influenced, if not determined, by social structures and linked to pathological social arrangements).

75. *See* Waldron, *supra* note 10, at 775 (noting that some theories of justice appear to be hostile to socioeconomic rights).

76. BERNARD E. HARCOURT, THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER 204 (2011).

77. *See* Weissman, *supra* note 11, at 406–23; Scott A. Melzer, *Gender, Work, and Intimate Violence: Men's Occupational Violence Spillover and Compensatory Violence*, 64 J. MARRIAGE & FAM. 820 (2002).

78. *See* Katherine M. Neckerman & Florencia Torche, *Inequality: Causes and Consequences*, 33 ANN. REV. SOC. 335, 344 (2007) (noting for example that economic inequality deepens divisions in social relations); Christopher R. Browning, *The Span of Collective Efficacy: Extending Social Disorganization Theory to Partner Violence*, 64 J. MARRIAGE & FAM. 833, 835 (2002). *See generally* Melzer, *supra* note 77 (considering the effects male partners' occupations may have on violence towards spouses or cohabitating female partners).

79. *See* BRIAN PHILLIPS, GLOBAL PRODUCTION AND DOMESTIC DECAY 107-08 (1998) (noting the strain on workers' marriages and families); John Gaventa, *From the Mountains to the Maquiladoras: A Case Study of Capital Flight and Its Impact on Workers*, *in* COMMUNITIES IN ECONOMIC CRISIS: APPALACHIA AND THE SOUTH 91–92 (John Gaventa et al. eds., 1990); Laurie Mercier, *Remembering and Redefining Deindustrialized Youngstown*, 55 AM. Q. 315, 320 (2003) (reviewing SHERRY LEE LINKON & JOHN RUSSO, STEELTOWN U.S.A.: WORK AND MEMORY IN YOUNGSTOWN (2003)) (noting that domestic violence rates rose in Youngstown after the demise of steel plants).

conflict, and violence.[80] Downward mobility and economic inequality weaken social capital and thus erode community norms that may prevent domestic violence.[81]

Since the 2008 recession, reports have documented the rise of domestic violence as a result of economic hardship.[82] The National Domestic Violence Hotline reported that the national increase in telephone calls in 2009 resulted from the decline in household finances and financial strain.[83] Since 2008, the judicial system has experienced a significant rise in the number of family violence case filings, which can be attributed to the ripple effects of the recession.[84] New York State recorded an eighteen percent increase in family violence cases that has turned "the courts into theaters of the economic crisis" and reached deep into the lives of formerly middle-class families.[85] Additionally, the 2009 reduction in violent crime rates in Philadelphia was not reflected in the number of domestic violence cases. On the contrary, domestic violence homicides increased sixty-seven percent—a result of deteriorating economic conditions.[86] In the same year, seventy-five percent of domestic violence shelters reported an increase in the number of victims seeking help, most of whom

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80. *See* OREN M. LEVIN-WALDMAN, PLANT CLOSURE, REGULATION, AND LIBERALISM 3, 23 (1992) (noting that worker displacement increases rates of spousal and child abuse); JOHN C. RAINES & DONNA C. DAY-LOWER, MODERN WORK AND HUMAN MEANING 47 (1986) (noting evidence that job loss leads to domestic violence); Rand D. Conger et al., *Linking Economic Hardship to Marital Quality and Instability*, 52 J. MARRIAGE & FAM. 643, 643 (1990) (noting the experiences of the Great Depression when economic hardship was found to increase the risk of family dysfunction, including physical abuse); Gaventa, *supra* note 79, at 91–92 (describing negative effects on family life after plant closings); Judy A. Van Wyk et al., *Detangling Individual-, Partner-, and Community-Level Correlates of Partner Violence*, 49 CRIME & DELINQ. 412, 424–29 (2003) (observing that subjective financial satisfaction is tied to domestic violence).

81. Neckerman & Torche, *supra* note 78, at 344; Browning, *supra* note 78, at 834; Suneeta Krishnan, *Do Structural Inequalities Contribute to Marital Violence? Ethnographic Evidence from Rural South India*, 11 VIOLENCE AGAINST WOMEN 759, 772 (2005).

82. Associated Press, *Domestic Abuse on Rise as Economy Sinks*, NBC NEWS (Mar. 10, 2009), http://www.nbcnews.com/id/30156918/ns/health-health_care/t/domestic-abuse-rise-economy-sinks/#.US0txGeZHnh; Manasi Sharma, *Recession-Related Domestic Violence on the Rise*, GLOBAL ENVISION (Apr. 10, 2009), http://www.globalenvision.org/2009/03/26/recession-related-violence-rise; *see, e.g.*, *The Continued Importance of the Violence Against Women Act: Hearing Before the S. Comm. on the Judiciary*, *supra* note 38, at 34; Philip N. Cohen, *Recession Begets Family Violence*, HUFFINGTON POST (Jan. 2, 2010), http://www.huffingtonpost.com/philip-n-cohen/recession-begets-family-v_b_409502.html; *On a Losing Streak*, ECONOMIST, Mar. 26, 2011, at 35, 36 (describing how the foreclosure crisis contributes to increasing rates of domestic violence and family dysfunction).

83. *Domestic Abuse on Rise As Economy Sinks*, *supra* note 82; *see also* Ian Urbina, *Philadelphia to Handle Abuse Calls Differently*, N.Y. TIMES, Dec. 31, 2009, at A13 (noting an increase in domestic violence calls due to the recession after a 15 year decrease); Michael Cooper & Allison Kopicki, *Facing Hardship, Jobless Say They Have Hope*, N.Y. TIMES, Oct. 27, 2011, at A1 (confirming that the unemployed are experiencing increased emotional or mental health problems and family conflict).

84. Neeta Pal, *Cuts Threaten Civil Legal Aid*, BRENNAN CTR. FOR JUSTICE (Apr. 22, 2011), http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services1/.

85. William Glaberson, *The Recession Begins Flooding into the Courts*, N.Y. TIMES, Dec. 28, 2009, at A1.

86. Ria Misra, *Domestic Violence and Recession—35 Dead in Philadelphia in '09*, POLITICS DAILY (Jan. 1, 2010), http://www.politicsdaily.com/2010/01/01/domestic-violence-and-recession-35-dead-in-philadelphia-in-0/.

identified financial strain as a cause of the violence.[87]

Several studies measuring the consequence of the recent recession found that families were "fraying at the seams" as a result of strained relationships brought about by economic uncertainty and hardship.[88] Market forces can frustrate established patterns of daily life and disrupt the intimate spaces of the household. Current conditions of chronic unemployment have subjected families to withering tensions. Moreover, the economic and occupational stress produced by these events is often mediated through socially-determined norms of masculinity. The stress produces havoc in the private domains of the household, undermining socially constructed gender roles pertaining to work and wages that dominate most families.[89] Economic crisis and the loss of work must be understood as a crucial point that reveals the ways that gender norms are embedded in all social relationships and work and wage-related circumstances.[90] Simply put, the likelihood of partner violence increases in structurally disadvantaged households and communities.[91]

Domestic violence scholars and advocates may have failed to pay attention to economic strain as a contributing cause of domestic violence, but they have not been oblivious to the economic repercussions of domestic violence. On the contrary, the literature has long recognized that domestic violence destabilizes women's participation in the workplace and that the ensuing economic dependencies precipitate and perpetuate abusive intimate relationships. Some domestic violence programs provide job and financial literacy counseling to enable women to gain economic independence.[92]

But current strategies have not been contextualized within current economic

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87. "MARY KAY TRUTH ABOUT ABUSE" SURVEY: NATIONAL FINDINGS FROM THIRD SURVEY OF DOMESTIC VIOLENCE SHELTERS IN THE UNITED STATES 2–4 (2011), http://www.ncdsv.org/images/marykay_truthaboutabusesurvey_2011.pdf.

88. Judith Warner, *What the Great Recession Has Done to Family Life*, N.Y. TIMES, Aug. 8, 2010, at MM9.

89. *See* Kathryn E. Gallagher & Dominic J. Parrott, *What Accounts for Men's Hostile Attitudes Toward Women? The Influence of Hegemonic Male Role Norms and Masculine Gender Role Stress*, 17 VIOLENCE AGAINST WOMEN 568, 578 (2011) (reviewing findings that explain men's aggression toward women as a function of social pressures to act in accordance with "hegemonic masculine gender role guidelines"). For a more in depth review of socially constructed reactions to economic uncertainty, see Weissman, *supra* note 11, at 428–31; Melzer, *supra* note 77, at 822.

90. TORRY D. DICKINSON & ROBERT K. SCHAEFFER, FAST FORWARD: WORK, GENDER, AND PROTEST IN A CHANGING WORLD 23 (2001).

91. Van Wyk et al., *supra* note 80, at 413–14; Carol B. Cunradi et al., *Neighborhood Poverty as a Predictor of Intimate Partner Violence Among White, Black, and Hispanic Couples in the United States: A Multilevel Analysis*, 10 ANNALS EPIDEMIOLOGY 297 (2000); Rebecca Miles-Doan, *Violence Between Spouses and Intimates: Does Neighborhood Context Matter?*, 77 SOC. FORCES 623, 624 (1998); Patricia Voydanoff, *Economic Distress and Family Relations: A Review of the Eighties*, 52 J. MARRIAGE & FAM. 1099, 1101–06 (1990) (observing that significant global economic changes are sources of stress for individuals and families within the home); *see* Barbara Pocock & Jane Clarke, *Time, Money and Job Spillover: How Parents' Jobs Affect Young People*, 47 J. INDUS. REL. 62, 71–72 (2005) (describing how economic uncertainty as well as difficult working conditions negatively affect the well being of families).

92. *See, e.g.*, Charlie Herman, *Empowering Women Through Financial Literacy*, MARKETPLACE MONEY (Oct. 7, 2011), http://www.marketplace.org/topics/your-money/empowering-women-through-financial-literacy.

conditions in which employment opportunities are limited and the responsibility for coping with economic crises has shifted from government and employers to individuals and families.[93] As a result of the recession, record unemployment, and the contingency of part-time and flexible jobs that characterize the current labor practices, the possibility of economic independence is often beyond the reach of vast numbers of women who confront insurmountable obstacles to gaining access to the wage-labor market that pays living wages.[94] Just as importantly, current approaches to financial literacy encourage women to function in "an unfettered market dominated by individual empowerment and choice where responsibility remains within the limits of the consumer . . . ."[95] These so-called "empowerment strategies" are funded by large corporations whose purpose differs from the goal of social justice movements to further the well-being of women.[96] Such strategies fail to address the structural underpinnings that produce financial distress and reproduce inequality.[97] They depoliticize struggles for economic equality and in fact often have limited "real-world" application.[98] Additionally, empowerment strategies may perpetuate the myth of "the good survivor" who can persevere despite economic policies that have produced the current economic crisis—a myth that has served to legitimize these policies.[99] In fact, some victims of domestic violence identify predatory

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93. Kerry Rittich, *Black Sites: Locating the Family and Family Law in Development*, 58 AM. J. COMP. L. 1023, 1030 (2010) (noting that the family is the "de facto source of economic security"); Jacob Hacker, *The Privatization of Risk and the Growing Economic Insecurity of Americans* (Jun. 7, 2006), http://privatizationofrisk.ssrc.org/Hacker.

94. *See* Katherine V.W. Stone, *Flexibilization, Globalization, and Privatization: Three Challenges to Labor Rights in Our Time* 1-2 (Globalization & Labor Standards, Working Paper No. 1-05, 2005), *available at* http://www.laborstandards.org/Wpapers/Stone_01-05.pdf ("Flexibilization refers to the changing work practices by which firms no longer use internal labor markets or implicitly promise employees lifetime job security, but rather seek flexible employment relations that permit them to increase or diminish their workforce, and reassign and redeploy employees with ease."). The downward mobility of entire communities often reduces available resources that might otherwise enable women to exit violent relationships. *See* Aubrey Spriggs Madkour et al., *Area Disadvantage and Intimate Partner Homicide: An Ecological Analysis of North Carolina Counties, 2004-2006*, 25 VIOLENCE & VICTIMS 363 (2010); Browning, *supra* note 78, at 835; *Judge Fines Woman $500 For Dropping Abuse Claim*, MACOMB DAILY (Macomb Cnty., Mich.), Apr. 24, 2007, http://www.macombdaily.com/article/20070424/NEWS01/304249996/judge-fines-woman-500-for-dropping-abuse-claim#full_story ("He's the breadwinner and I need him at home with me.").

95. Martin Saavedra, *Educated Consumer? Foreclosure Crisis and Neoliberal Subjectivities* 9 (2011) (unpublished manuscript delivered at ClassCrits IV, American University Washington College of Law, Sept. 23–24, 2011) (on file with author). *See* Herman, *supra* note 92 (describing literacy programs for victims of domestic violence that include strategies such as investing in the stock market).

96. Rebecca Hall, Paper Abstract (unpublished manuscript delivered at ClassCrits IV, American University Washington College of Law, Sept. 23–24, 2011) (on file with author) (noting that large corporations like Allstate and cosmetics companies often fund "empowerment projects" for victims of domestic violence).

97. Saavedra, *supra* note 95, at 9–10.

98. Dag Leonardsen, *Empowerment in Social Work: An Individual Vs. a Relational Perspective*, 16 INT'L J. SOC. WELFARE 3, 9 (2007) (describing how a program designed to teach budgeting skills and training for job seeking produced additional stress because of the lack of funds with which to budget and the lack of available jobs).

99. Mercedes González de la Rocha, *The Construction of the Myth of Survival*, 38 DEV. & CHANGE 45, 48, 62 (2007).

lending as the most significant obstacle to economic independence.[100] Perhaps most importantly for purposes of this article, domestic violence programs have addressed the consequences of abuse with little attention to the development of prevention strategies on the basis of a socioeconomic analysis—that is, these programs neglect to address the structural causes of the violence itself.[101] The focus has been on the symptoms of oppression rather than the sources of oppression that affect men and women.

Social problems such as domestic violence often result from both material conditions and cultural systems that socialize men and women into the conventions of daily life.[102] Without a theoretical framework with which to construct a usable explanatory model addressing criminal behavior as a function of social systems and economic structures, domestic violence remedies are doomed to focus on consequences, not cause.

B. The Gap in Scholarship

Domestic violence literature's continued focus on matters of political economy suggests that the scholarship lags behind other fields of critical knowledge related to human rights, public health, families, crime, and theories of justice. Renewed interest in class and inequality has placed poverty, economic change, and downward mobility at the center of recent research and advocacy trends as a way to understand and respond to the determinants of deviant behavior.[103] For example, the Occupy Wall Street movement has of course drawn national attention to issues of economic inequality and wealth redistribution. New scholarly networks challenge the premise of the "free market" paradigm and offer new solutions for a wide range of social problems.[104] Researchers representing diverse branches of study emphasize a relational approach to the interrogation of human rights violations. Others who study

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100. REBECCA HALL, UTAH DOMESTIC VIOLENCE COUNCIL, ECONOMIC JUSTICE AND EMPOWERMENT PROJECT FINAL REPORT 11, 39 (2011), *available at* http://ssrn.com/abstract=1962781 (reviewing findings after a study on economic empowerment efforts with domestic violence victims in the state of Utah).

101. Sandra L. Martin et al., *Primary Prevention of Violence Against Women: Training Needs of Violence Practitioners*, 15 VIOLENCE AGAINST WOMEN 44, 50 (2009). Prevention programs focus on safety planning and fatality review which do not consider political economic structures such as inequality and economic strain. *See Arizona Backs Groundbreaking Approach to Domestic Violence Intervention* (Sept. 9, 2011,), http://www.newswise.com/articles/arizona-backs-groundbreaking-approach-to-domestic-violence-intervention.

102. *See* Ardha Danieli, *Gender: The Missing Link in Industrial Relations Research*, 37 INDUS. REL. J. 329, 331 (2006) (describing how social practices are produced).

103. *See* Eagleton, *supra* note 54, at 14 (noting that "Marxism is "'back on the agenda'"); June Carbone, *Unpacking Inequality and Class: Family, Gender and the Reconstruction of Class Barriers*, 45 NEW ENG. L. REV. 527, 527 (2011) (arguing that renewed attention to class is long overdue); Martha T. McCluskey, *Constitutionalizing Class Inequality: Due Process in State Farm*, 56 BUFF. L. REV. 1035, 1056 (2008) (arguing for the "uncovering and retelling the story of economic class in constitutional doctrine").

104. *About ClassCrits*, CLASSCRITS, http://classcrits.wordpress.com/about/ (last visited Feb. 27, 2013) (describing a recent network of scholars and activists who seek to engage in a critical analysis of law and the economy).

international law similarly encourage a class approach to the issue.[105] Indeed, the very relationship between socioeconomic rights and broad principles of justice recently became a subject of concern within the realm of law and philosophy.[106] These approaches share a commitment to the development of a methodology that contextualizes acts of deviance and social harm in a broader socioeconomic framework.[107]

The new scholarship has assumed several forms. In the field of human rights, grave social harms have been associated with structural inequality as a way to consider strategies of prevention, intervention, and repair. Experts have suggested a relationship between violence, economic vulnerability, and genocide. Amelioration of economic inequality is seen as a minimum condition to reduce the threat of mass killings and other forms of political violence.[108] Other recent studies of genocide also identify economic globalization as a source of violence. These analyses demonstrate that market-driven development strategies exacerbate inequality and accelerate degradation. The consequences have been tragic and perhaps nowhere more so than the mass murders in Rwanda.[109] The United Nations Secretary General's Report on "Implementing the Responsibility to Protect" against genocide and other crimes against humanity warned that developed countries may be vulnerable to endemic violence because of deteriorating social and economic circumstances.[110]

The scholarship addressing post-conflict societies similarly argues that the relationship between violence—male violence in particular—and economic and social insecurity must be addressed to reduce threats of continued violence.[111] Studies of torture establish that acts of inhumanity cannot be addressed solely within the realms of civil and political rights, but must also concern matters of wealth inequality and income insecurity—precisely those conditions that produce both torture victims and perpetrators.[112]

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105. *See, e.g.*, B.S. Chimni, *Prolegomena to a Class Approach to International Law*, 21 EUR. J. INT'L LAW 57 (2010).

106. Waldron, *supra* note 10, at 775.

107. Calvin Morrill et al., *Seeing Crime and Punishment Through a Sociological Lens: Contributions, Practices, and the Future*, 2005 U. CHI. LEGAL F. 289, 295–96 (2005).

108. U.N. Secretary-General, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, ¶ 33, U.N. Doc. A/HRC/10/30 (Feb. 18, 2009), *available at* http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.30.pdf (including recommendations by the UN Special Advisor on Genocide to mitigate increasing poverty and inequality in order to prevent political violence in Kenya).

109. *See generally* PETER UVIN, AIDING VIOLENCE: THE DEVELOPMENT ENTERPRISE IN RWANDA (1998). For a description of recurrent violence in countries caught up in economic liberalization projects, see ANNE ORFORD, READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW 102, 106 (2003).

110. U.N. Secretary-General, *Implementing the Responsibility to Protect*, ¶ 21, U.N. Doc. A/63/677 (Jan. 12, 2009).

111. Naomi Cahn & Fionnuala Ní Aulâin, *Gender, Masculinities, and Transition in Conflicted Societies*, 44 NEW ENG. L. REV. 1, 7 (2009) (identifying socially constructed roles of masculinity and economic and social insecurity as part of the cluster of causalities for post-conflict violence). Cahn also calls for "rehabilitation for victims and perpetrators, and presses for programs that address issues of violent-masculinity through meaningful economic opportunities." *Id.* at 11, 21.

112. Louise Arbour, *Preface*, *in* ATTACKING THE ROOT CAUSES OF TORTURE: POVERTY, INEQUALITY

Recent articles on child trafficking and sexual exploitation criticize the failure to address systemic sources of the problem and challenge the usefulness of after-the-fact punitive interventions.[113] These studies note that the prevailing response to trafficking relies on the criminal justice system to identify and punish individual bad actors, pays little attention to poverty alleviation, and lacks a "strong commitment to social equity."[114] The recent report by the United Nations Special Rapporteur on Extreme Poverty and Human Rights urges attention to the relationship between economic distress and human rights.[115] The Special Rapporteur identifies the promulgation of laws and legal practices that "punish, segregate, control and undermine the autonomy of persons living in poverty."[116] It criticizes the penalization of the poor for "deviant" behaviors related to impoverishment and thus helps to explicate the relationship between crime and poverty.[117] The report's assessment is consistent with theories that have recognized that extreme poverty must be introduced as a condition germane to the calculus of the criminal justice system.[118] The consensus in recent human rights scholarship is striking: economic inequality must be addressed as a way to alleviate the conditions that produce all forms of violence.[119]

A corpus of health law scholarship similarly recognizes economic hardship and inequality as factors contributing to violent and harmful behavior.[120] Chronic conditions of income inequality produce stress and low morale that affect health adversely, often resulting in violence.[121] Health issues linked to income inequality cannot be resolved by medical intervention alone, but rather

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AND VIOLENCE: AN INTERDISCIPLINARY STUDY 9, 10, 34, 39, 42 (Thomas E. McCarthy ed., 2006). The UN has emphasized that human rights cannot be protected without consideration of economic cultural and social rights. NATHALIE MIVALEZ, WORLD ORGANISATION AGAINST TORTURE, TORTURE AND VIOLATIONS OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: APPRAISAL OF THE LINK AND THE RELEVANCE TO THE WORK OF THE UNITED NATIONS COMMITTEE AGAINST TORTURE (2001), *available at* http://www.ecoi.net/file_upload/ds140_02320isr.pdf.

113. Jonathan Todres, *Widening Our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking*, 33 MICH. J. INT'L L. 53, 58 (2011); Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT'L L. 1, 3 (2010).

114. Todres, *Widening Our Lens*, *supra* note 113, at 63, 74.

115. *See generally* U.N. Secretary-General, *Extreme Poverty and Human Rights,* U.N. Doc. A/66/265 (Aug. 4, 2011), *available at* http://www.ohchr.org/Documents/Issues/Poverty/A.66.265.pdf.

116. *Id.* at 4.

117. *Id.* at 11.

118. Michele Estrin Gilman, *The Poverty Defense*, 47 U. RICH. L. REV. 495, 502 (2013) (quoting Richard Delgado's study on the correlation between extreme poverty and crime).

119. Frances Stewart, *Policies Towards Horizontal Inequalities in Post-Conflict Reconstruction* 6 (CRISE Working Paper No. 7, 2005), *available at* http://economics.ouls.ox.ac.uk/13001/1/workingpaper7.pdf; Finn Kjaerulf & Rodrigo Barahona, *Preventing Violence and Reinforcing Human Security: A Rights-Based Framework for Top-Down and Bottom-Up Action*, 27 REVISTA PANAM SALUD PUBLICA 382, 392 (2010); *see* Ann Orford, *The Subject of Globalization: Economics, Identity and Human Rights*, 24 AM. SOC'Y INT'L L. PROC. 146, 147 (2000) (arguing that increasing poverty, unemployment and insecurity combine into "a recipe for human rights abuses").

120. Ariel Kalil & Kathleen M. Ziol-Guest, *Single Mothers' Employment Dynamics and Adolescent Well-Being*, 76 CHILD DEV. 196 (2005); John W. Lynch et al., *Income Inequality and Mortality in Metropolitan Areas of the United States,* 88 AM. J. PUB. HEALTH 1074, 1079 (1998).

121. Neckerman & Torche, *supra* note 78, at 341–43; Morgan Kelly, *Inequality and Crime*, 82 REV. ECON. & STAT. 530, 537 (2000).

require attention to structural matters.[122] Public health scholars studying the rates of HIV infection in the United States established that the biology of transmission and infection is directly linked with socioeconomic conditions.[123] They have urged greater attention to this relationship and argue that a redistribution of resources is required as a means to reduce infection rates.[124] Health researchers have stated plainly:

> There is persuasive evidence that the reduction of health inequalities can only be achieved by addressing their fundamental causes as opposed to the diseases through which they are expressed or the immediate precursors of those diseases. . . . Thus, it is widely acknowledged that structural factors, largely determined by the economic organisation of nation states and the wider global community, are unequivocally implicated in the perpetuation of inequalities in health.[125]

Injury-prevention specialists similarly attribute a pattern of household mishaps to income inequality. Accidents are more likely to occur in low-income households without access to products and equipment that properly meet established safety standards.[126] In sum, scholars have articulated the need to address the relationship between socioeconomic status and well-being in order to improve public health outcomes.

Family law scholarship, too, has increasingly addressed social tensions in households within the context of class and inequality.[127] Family law scholars have demonstrated that family well-being and dysfunction must be considered within the realm of the political economy.[128] They document the ways in which household power differentials often replicate market hierarchies, with deleterious effects on its members.[129] Cycles of family instability are themselves symptoms of cycles of the market: economic adversity often wreaks havoc upon a household, disrupting the conventions of intimacy, patterns of child-rearing, and gender-determined norms of self-esteem.[130] Researchers in the field of child abuse have demonstrated the influence of economic stability on parent-child relationships. Children's law experts criticize the shift from child welfare to child protection and the attending emphasis on policing "the deviant parent" as

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122. John Lynch et al., *Is Income Inequality a Determinant of Population Health? Part 1. A Systematic Review*, 82 MILBANK Q. 5, 66–69, 82 (2004).

123. Sally Zierler & Nancy Krieger, *Reframing Women's Risk: Social Inequalities and HIV Infection*, 18 ANN. REV. PUB. HEALTH 401, 403 (1997).

124. *Id.* at 425, 429.

125. Alex Scott-Samuel et al., *Hegemonic Masculinity, Structural Violence and Health Inequalities*, 19 CRITICAL PUB. HEALTH 287, 287–88 (2009).

126. Catherine Cubbin & Gordon S. Smith, *Socioeconomic Inequalities in Injury: Critical Issues in Design and Analysis,* 23 ANN. REV. PUB. HEALTH 349, 369–70 (2002).

127. *See generally* MARTHA ALBERTSON FINEMAN, THE AUTONOMY MYTH (2004) (arguing for the right to structural supports for families); MAXINE EICHNER, THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICAN'S POLITICAL IDEALS (2010).

128. *See* EICHNER, *supra* note 127, at 55–57; Carbone, *supra* note 103, at 530.

129. Rittich, *supra* note 93, at 1031; Jill Elaine Hasday, *The Canon of Family Law*, 57 STAN. L. REV. 825, 892 (2004) (scrutinizing laws that regulate families based on wealth).

130. Carbone, *supra* note 103, at 549, 552, 556 (observing the "two-parent family as the province of the elite").

a result of the de-politicization of social inequality.[131] Additionally, punitive responses permeate child protection systems, now viewed as "adjuncts of the penal apparatus," thereby discouraging families from availing themselves of social services.[132] Researchers urge attention to the conditions of socioeconomic disadvantage.[133]

Experts on sexual abuse and incest are reluctant to rely on the criminal justice system, wary of an exploitative and racist system that has revealed itself incapable of providing meaningful intervention.[134] They reject the tendency to characterize such acts as "personal and familial trauma," preferring instead to situate deviance in the context of economic displacement, lack of universal health care, the dismantling of the welfare state, and capitalism's exploitation of sex as a means of power.[135]

The field of social work has also examined deviance from a structural perspective. New critiques challenge the emphasis on individual capacity-building made by the social work concept of empowerment.[136] Social work scholars increasingly look to the study of social patterns that contribute to crisis rather than the individual consequence of crisis.[137] As a methodology, researchers examine hierarchies of power, wealth inequality, and issues of social justice as a means to fulfill their ethical responsibilities in the realm of social work.[138]

The scholarship of domestic violence has fallen behind the current intellectual and theoretical advances that have arrived at a deeper understanding of the complex working of market forces in the daily life of men and women. Domestic violence scholarship remains fixed on theories of patriarchy based on notions of a male-dominated society—arguments that cannot be gainsaid, of course, but arguments that tend to neglect the structural conditions from which patriarchy emerged as a cultural arrangement.[139] Missing too from the domestic violence scholarship are the explanations of ways that hierarchies of power and authority other than patriarchy contribute to patriarchal structures.

There are few manifestations of social dysfunction in which issues of structural inequality are not relevant. Notable feminist scholars Nancy Fraser and Wendy Brown urge feminists to revive their relationship with political

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131. David McConnell & Gwynnyth Llewellyn, *Social Inequality, 'The Deviant Parent' and Child Protection Practice*, 40 AUST. J. SOC. ISSUES 553, 554 (2005).

132. *See* Loïc Wacquant, *Class, Race and Hyperincarceration in Revanchist America*, DAEDALUS, Summer 2010, at 74, 84–85.

133. *Id.*

134. SARA KERSHNAR ET AL., GENERATION FIVE, TOWARD TRANSFORMATIVE JUSTICE: A LIBERATORY APPROACH TO CHILD SEXUAL ABUSE AND OTHER FORMS OF INTIMATE AND COMMUNITY VIOLENCE 20 (2007).

135. GILLIAN HARKINS, EVERYBODY'S FAMILY ROMANCE: READING INCEST IN NEOLIBERAL AMERICA 5–10 (2009); KERSHNAR, *supra* note 134, at 14–18; Michael Petit, *America's Child Death Shame*, BBC NEWS (Oct. 17, 2011), http://www.bbc.co.uk/news/magazine-15193530.

136. Leonardsen, *supra* note 98, at 4.

137. *Id.* at 7.

138. Kathy Lay & Lisa McGuire, *Building a Lens for Critical Reflection and Reflexivity in Social Work Education*, 29 SOC. WORK EDUC. 539, 546 (2010).

139. For a helpful critique of current feminist theories about patriarchy, see Hunnicutt, *supra* note 73, at 553.

economic justice: "to integrate the best of recent feminist theorizing with the best of recent critical theorizing about capitalism"[140] and to "cultivate the memory—and . . . ignite that memory—of the utopian imaginary of the revolutionary paradigm . . . ."[141] Inequality in the United States has increased dramatically.[142] The crisis of the political economics of neoliberalism has reached grave proportions.[143] The financial debacle of the late first decade of the 2000s destabilized the housing and financial sectors and triggered a deep and lasting economic contraction.[144] Chronic economic crises have withering, and often permanent, effects on families and households. The line between political economic structures and domestic violence is direct, and thus invites an obvious question: why not expand beyond paradigmatic criminal laws as a means to end gender-based violence?

III. REDEFINING THE BOUNDARIES OF DOMESTIC VIOLENCE LAW

In October 2011, the Topeka city council voted as a budget-saving measure to repeal a local law that criminalized domestic violence.[145] This well-publicized event suggests that criminalization strategies are often subject to political expedience and market forces. The action by Topeka is not the first to expose a criminal justice system uninterested in carrying out its paradigmatic law enforcement functions in cases of domestic violence when such strategies are disadvantageous for law enforcement agencies. In *Town of Castle Rock v. Gonzales*, the Supreme Court ruled that the police were not required to enforce domestic violence restraining orders, notwithstanding a state law that required enforcement.[146] In the realm of domestic violence, criminal law often functions in an arbitrary manner and undermines its stated purpose.

Notwithstanding such lapses, the remedies to domestic violence will always be associated with criminal law. The task before scholars and advocates is the development of radically different criminal law approaches to domestic violence. As criminal law scholars note: "[t]he criminal justice system needs more than reform. It requires reimagining."[147]

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140. Fraser, *supra* note 50, at 98.

141. Brown, *supra* note 53, at 15.

142. Stephen B. Cohen, *Inequality and the Deficit* 4, 9, 17 (Georgetown Public Law and Legal Theory, Working Paper No. 11-101, 2011), *available at* http://ssrn.com/abstract=1890645 (noting a significant reversal of historical trends); Ann M. Piccard, *The United States' Failure to Ratify the International Covenant on Economic, Social and Cultural Rights: Must the Poor Be Always with Us?*, 13 SCHOLAR 231, 234 (2010) (noting that prior to the economic crisis of 2008, poverty rates in the United States were climbing).

143. Benjamin Kunkel, *How Much Is Too Much?*, LONDON REV. BOOKS, Feb. 3, 2011, at 9 (described by David Harvey as "surplus capital and surplus labour existing side by side with seemingly no way to put them back together").

144. GÉRARD DUMÉNIL & DOMINIQUE LÉVY, THE CRISIS OF NEOLIBERALISM 1 (2011).

145. A. G. Sulzberger, *Facing Cuts, a City Repeals Its Domestic Violence Law*, N.Y. TIMES, Oct. 12, 2011, at A11. For further discussion of the deficiencies of the criminal justice system to carry out its paradigmatic functions of arrest and prosecution when such strategies are deemed inexpedient for law enforcement, *see* Weissman, *supra* note 11, at 399.

146. 545 U.S. 748, 768 (2005).

147. Cecelia Klingele et al., *Reimagining Criminal Justice*, 2010 WIS. L. REV. 953, 954 (2010).

This Part offers alternative strategies to address domestic violence in three settings. Two of these settings exemplify criminalization models that are embedded in formal criminal justice institutions but function outside of the prosecution-to-prison paradigm, the first *ex ante* and the second *ex post*. The third setting addresses crime and accountability outside of the formal criminal justice system entirely. This Part then moves beyond the realm of criminal law to law-related initiatives that seek to constrain market forces as a way to strengthen domestic violence advocacy.

A. Criminal Justice Strategies Re-Imagined

1. Law Enforcement Investment in the Political Economy

The relationship between economic strain and domestic violence suggests new criminal justice models to address structural concerns, including unemployment, poverty, and neighborhood infrastructure.[148] Law-enforcement strategies that shift from *post hoc* responses to preventative initiatives with a focus on community problem-solving provide one alternative to arrest and prosecution.[149] These models are designed to *prevent* the commission of a criminal act that would otherwise necessitate conventional law enforcement responses.[150]

Several existing progressive criminal justice initiatives offer promising possibilities and serve as models for novel approaches to domestic violence. Police and prosecutors in Kalamazoo, Michigan, have claimed legal authority to oblige "slum landlords" to comply with housing codes and improve their housing stock.[151] In Brooklyn, New York, the District Attorney's office has developed expertise beyond prosecutorial trial skills to work with communities to mobilize local assets, address housing issues, and reclaim public space.[152] Kansas state correctional officials inaugurated the Justice Reinvestment program designed to reduce funding of prisons and reallocate the savings to infrastructure and civic institutions in high-risk neighborhoods.[153] In Wichita, as part of the Justice Reinvestment program, law enforcement officials developed a plan to purchase abandoned property and redevelop housing in blighted

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148. Gruber, *supra* note 66, at 655–56 (noting that under different circumstances, criminal justice might be part of a feminist agenda); *see* Wacquant, *supra* note 132, at 85 (emphasizing the need for deep and broad reforms). For a review of a progressive analysis and description of alternative approaches to crime, see generally CENTER COMMUNITY ALTERNATIVES, http://www.communityalternatives.org (last visited Feb. 28, 2013).

149. Klingele, *supra* note 147, at 979.

150. *See* Christine J. Sutton, *Reviews of Professional Periodicals: Crime and Delinquency*, FED. PROBATION, June 2002, at 61, 61 (reviewing M. Kevin Gray et al., *Examining Probation Violations: Who, What, and When*, 47 CRIME & DELINQ. 537 (2001) (urging probation services to assist defendants in finding employment)).

151. Walter J. Dickey & Peggy A. McGarry, *The Search for Justice and Safety Through Community Engagement: Community Justice and Community Prosecution*, 42 IDAHO L. REV. 313, 316, 354 (2006).

152. *See Redhook Community Justice Center*, KINGS COUNTY DISTRICT ATTORNEY'S OFFICE, http://www.brooklynda.org/red%20hook/red_hook.htm (last visited Feb. 28, 2013); *see also* Dickey & McGarry, *supra* note 151, at 325, 354–55.

153. JUDITH GREENE & MARC MAUER, DOWNSCALING PRISONS: LESSONS FROM FOUR STATES, 53–54 (2010).

neighborhoods.[154] And in an effort to reduce recidivism and re-incarceration, probation and parole officers in Arizona have joined with social workers to assess factors such as poverty, unemployment, substance abuse, and mental illness and facilitate access to health care, job training, unemployment or disability benefits, and food stamps.[155] These methods contribute to the elimination of the conditions that contribute to crime, reduce opportunities for criminal activity and draw on social controls, all strategies identified as effective means of reducing crime.[156] Addressing the socioeconomic factors that contribute to crime must be a fundamental premise to any prevention strategy.[157]

These measures do not respond directly to crimes of domestic violence, of course, but they do suggest solutions relevant to gender-based violence. The measures provide models upon which to base reforms needed within the criminal justice system. They embody solutions advocated by progressive criminal law scholars who discern in "massive investment in schools, social services, health care, and unfettered access to drug and alcohol rehabilitation" a means to reduce crime and the criminal justice system's overreliance on punishment.[158] Moreover, these methods respond to domestic violence scholars who urge police and prosecutors to adopt strategies that are responsive to the circumstances of marginalized communities.[159]

Little attention has been given to the ways that these reforms could be applied to domestic violence. Indeed, the domestic violence movement has not advocated new approaches to reverse the trend of over-criminalization and hyper-incarceration—an oversight not without irony for a movement that developed out of the civil rights project.[160] Whether such reforms can influence criminal justice procedures depends on the will of the political leaders as well as the efforts of advocates.[161] In fact, the call to reform the criminal justice system has been articulated as a priority for the U.S. civil rights/human rights movement for decades. As Loïc Wacquant observes, class is "the first filter of selection for incarceration," while "race comes second" along with the "rapid 'blackening' of the prison population even as serious crime 'whitened.'"[162] These discriminatory characteristics call into question efforts to obtain justice for

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154. JUDITH GREENE & NESTOR RIOS, POSITIVE TRENDS AND BEST PRACTICES IN CRIMINAL JUSTICE REFORM: A NATIONAL OVERVIEW 30 (2009), *available at* http://www.justicestrategies.org/sites/default/files/publications/PositiveTrends.pdf.

155. *Id.* at 29.

156. Klingele et al., *supra* note 147, at 967.

157. Sharon Pratt Kelly, *Can We Win the Battle for America's Streets?* USA TODAY MAG., May 1994, at 22, 23.

158. Wacquant, *supra* note 132, at 85.

159. Kit Kinports, *Feminist Prosecutors and Patriarchal States*, CRIM. L. & PHIL. (forthcoming) *available at* http://ssrn.com/abstract=1959712; *see* Fedders, *supra* note 62 and accompanying text.

160. Evan Stark, *Insults, Injury, and Injustice: Rethinking State Intervention in Domestic Violence Cases*, 10 VIOLENCE AGAINST WOMEN 1302, 1303 (2004) (describing similarities between the domestic violence movement and the civil rights movement's demands for formal rights and equal protection).

161. *See* Nicola Lacey, *American Imprisonment in Comparative Perspective*, DAEDALUS, Summer 2010, at 102, 105 (observing that reforms to the criminal justice system are dependent on certain political systems that are either more or less conducive to support economic and social policies aimed at reducing exclusionary criminal justice policies).

162. Wacquant, *supra* note 132, at 78 (noting "inmates are *first and foremost poor people*").

victims of domestic violence. Indeed, domestic violence advocates would do well to consider how the values associated with the civil rights struggles can inform criminal justice responses to gender violence.

2. Veterans' Courts: Theorizing Human Behavior

A second and more recent model—one that is fully situated within the formal criminal justice system—involves special court programs for veterans.[163] Unlike the first model, which is designed to affect *ex ante* the circumstances that contribute to domestic violence, veterans' courts intervene in circumstances after a crime has been committed.

The first veterans' court was established in 2008 in response to patterns of rising crime among returning veterans, behavior that was attributed to post-traumatic stress disorder and other deployment-related emotional problems.[164] The courts increased in numbers and currently, approximately eighty such programs are in operation nationwide.[165] These courts have relied on the belief that the effect of military service ought to mitigate the consequences for criminal acts.[166] They function on the assumption that veterans return home profoundly changed by the experiences of war and thus may commit criminal acts because of external circumstances that cause deviant behavior.[167] Veterans' courts endeavor to provide assistance with a range of services including assistance with housing needs, mental health and drug addiction services, and job training.[168]

Specialized courts are not a new approach, of course. They fall within the tradition of "problem-solving courts" designed to devise alternatives to incarceration strategies.[169] Additionally, they often share a desire to improve

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163. Marcia G. Shein, *Post-Traumatic Stress Disorder in the Criminal Justice System: From Vietnam to Iraq and Afghanistan*, FED. LAW., Sept. 2010, at 42, 50; Peter Katel, *Caring for Veterans*, 20 CQ RESEARCHER 363, 378 (2010), *available at* http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2010042300&type=hitlist&num=0; Erica Goode, *Coming Together to Fight for a Troubled Veteran*, N.Y. TIMES, July 18, 2011, at A1; *Leave No Veteran Behind*, June 4, 2011, ECONOMIST, at 38.

164. Goode, *supra* note 163.

165. *Veterans Court: Incredible Success Rate*, FLA. TIMES-UNION (Jacksonville), Feb. 10, 2012, http://jacksonville.com/opinion/editorials/2012-02-10/story/veterans-court-incredible-success-rate.

166. John Schwartz, *Defendants Fresh From War Find Service Counts in Court*, N.Y. TIMES, Mar. 16, 2009, at A14.

167. *The Value of Establishing Veterans Courts: Hearing Before the H. Comm. on Veterans Affairs*, 111th Cong. (statement of Patrick W. Welch, PhD, Director, Veterans Service Agency, Erie Cnty., N.Y.) (noting the view of judges that "people, places, and things can lead to trouble that [the veteran] did not really intend to happen"), *available at* http://www.erie.gov/veterans/pdfs/PWWtestimonyHouse091609.pdf.

168. Schwartz, *supra* note 166, at A14.

169. Chrysanthi S. Leon, *Should Courts Solve Problems? Connecting Theory and Practice*, 43 CRIM. L. BULL. 879, 879 (2007) (describing "hundreds of experimental courts"); LeRoy L. Kondo, *Untangling the Tangled Web: Federal Court Reform Through Specialization for Internet Law and Other High Technology Cases*, 6 UCLA J.L. & TECH., 1, 19 (2002). Most of these courts have at best had mixed results. *See generally* Marsha Weissman, *Aspiring to the Impracticable: Alternatives to Incarceration in the Era of Mass Incarceration*, 33 N.Y.U. REV. L. & SOC. CHANGE 235 (2009) (noting the failure of alternatives to incarceration programs because they function in the shadow of the carceral state).

outcomes and reduce court inefficiencies.[170] However, specialized courts are often criticized for remaining inextricably tied to the dominant criminal justice paradigm and for widening the net of individuals who otherwise ought not to have been brought into the criminal justice system in the first place.[171] The "specialized" domestic violence courts that have been established often take the form of an integrated civil and criminal court for the purpose of administrative streamlining while alleviating the burdens of the process for victims.[172] These courts are primarily associated with efficient case management and a focus on enhancing prosecutorial functions.[173] More importantly for the purpose of this article, they do not address the determinants of domestic violence and have been criticized for denying due process to defendants and neglecting rehabilitation goals, while stigmatizing domestic violence cases.[174]

In contrast with other models of specialized courts, veterans' courts represent, in intent and outcome, a paradigmatic shift; they lend credence to the proposition that criminal behavior often has its origins in structural conditions beyond the scope of individual volition.[175] These courts "focus on the offender rather than the crime" and seek "to understand and address the causes of the criminal behavior."[176] Unlike mitigation strategies introduced by the defendant at the sentencing phase in a criminal trial, veterans' courts offer a venue in which to contextualize—sympathetically—criminal conduct as a function of structural circumstances. Veterans' courts intervene after violence has occurred, but they function as a forum in which the "causes" of crime may be considered, thereby promoting the theorization of human behavior that serves to enlighten *ex ante* policies related to domestic violence crime and intervention.[177]

Increasing numbers of law enforcement experts and criminal justice officials

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170. Leon, *supra* note 169, at 100.

171. *See* Eric J. Miller, *Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism*, 65 OHIO ST. L.J. 1479, 1552–53 (2004).

172. *See* Elizabeth L. MacDowell, *When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism*, 20 TEX. J. WOMEN & L. 95, 97 (2011).

173. Allison Cleveland, *Specialization Has the Potential to Lead to Uneven Justice: Domestic Violence Cases in the Juvenile & Domestic Violence Courts*, MOD. AM., Spring 2010, at 17, 18 (2010) (noting that at least in one jurisdiction, domestic violence courts were harder on perpetrators than other courts and reflect a "pro-victim, anti-defense bias").

174. Allegra M. McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L.J. 1587, 1606 (2012); Quinn, *supra* note 52, at 51; David M. Fine, *The Violence Against Women Act of 1994: The Proper Federal Role in Policing Domestic Violence*, 84 CORNELL L. REV. 252, 298–99 (1998).

175. Shein, *supra* note 163, at 50. One critique of these courts is that they create a privileged class of defendants; *see* Dahlia Lithwick, *A Separate Peace*, NEWSWEEK, Feb. 22, 2010, at 20 (recounting the objections raised by the American Civil Liberties Union). These courts may likely serve as a model for most, if not all crimes but for purposes of this article, it references feasibility for gender-based crimes. *See* Lynne Marek, *Courts for Veterans Spreading Across U.S.: Wave of Vets in Courts Trips Alarm*, NAT'L L.J., Dec. 22, 2008, at 1 (noting necessity of addressing the underlying issues of criminal behavior).

176. Hon. Wendy S. Lindley, *The Promise of Veterans Court*, 51 ORANGE CNTY. LAW. 29 (2009) (asserting that for a defendant suffering from PTSD who commits a crime, "effective treatment won't be obtained through traffic school, or through a traditional batterers intervention program, or through prison"); *see also* Schwartz, *supra* note 166 (reporting sympathetic comments by one federal district court judge toward veterans in criminal court and showing leniency).

177. *See* Morrill et al., *supra* note 107, at 297 (describing a particular type of sociological inquiry to the study of crime).

support veterans' courts as a far more usable alternative to traditional criminal justice strategies.[178] These authorities recognize that social forces contribute to criminal behavior.[179] In a statement before the House of Representatives Committee on Veterans Affairs, the Director of the New York Veterans Service Agency testified that veterans who found themselves in the criminal justice system "are not bad people; they just got caught up with the wrong people, places and things."[180] Similar views often prevail even when the defendant commits serious offenses.[181] Indeed, the Supreme Court ratified the theories upon which veterans courts are based. In *Porter v. McCollum*, a domestic violence case involving the murder of the defendant's former girlfriend and her current boyfriend, the Court acknowledged the legal relevance of stress and emotional trauma caused by conditions of combat over which the defendant had no control.[182] The Court considered these factors as relevant to the issue of the defendant's mental capacity and guilt, and held that the failure to raise evidence of "the intense stress and mental and emotional toll that combat took" constituted ineffective assistance of counsel.[183]

The decision in *Porter* suggests a willingness to consider the consequences of combat and the difficulties faced in readjusting to civilian life as factors relevant to criminal liability.[184] Veterans' courts consider high unemployment, chronic financial instability, and mental health problems as factors contributing to substance abuse and increased anger and sexual aggression, all attributed to the trauma of combat.[185] Many veterans who suffer post-traumatic stress do not seek mental health care.[186] The symptoms and the failure to obtain treatment help explain why veterans commit a statistically significant number of crimes, including rape and assault.[187]

Veterans are deemed more worthy of public sympathy than the un- and

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178. Goode, *supra* note 163.

179. *Id.* (noting that law enforcement officials agree that "[t]he society that trained them and sent them into harm's way . . . bears some responsibility").

180. Welch, *supra* note, 167; *but cf.* Marti Macquire, *Raleigh Officer Shapes How Police Deal with Mentally Ill*, NEWS & OBSERVER, Nov. 20, 2011, http://www.newsobserver.com/2011/11/20/1657519/raleigh-officer-shapes-how-police.html (quoting a police officer who acknowledges that some people involved with the criminal justice system "just seem to be there because of circumstances that are not of their own control").

181. Joshua Zuber, *Veteran's Court Program Expanded*, KFOX14 (Feb. 13, 2012), http://www.kfoxtv.com/news/news/veterans-court-program-expanded/nHb46/ (noting that the veterans' court in El Paso recently expanded from misdemeanors to felonies); Goode, *supra* note 163 (noting that defendant had shot at police); Robert Boczkiewicz, *Veteran of Afghanistan, Iraq Gets Probation*, PUEBLO CHIEFTAIN (Pueblo, Colo.), Dec. 19, 2009, http://www.chieftain.com/news/local/article_d2d823fb-19ee-5eb4-ac54-dca372dd75d4.html (describing defendant who had committed acts of bribery with inmates and family members at a high security U.S. prison).

182. 130 S. Ct. 447, 455 (2009) (per curiam).

183. *Id.* at 454–55.

184. Lithwick, *supra* note 175; Katel, *supra* note 163.

185. *Leave No Veteran Behind*, *supra* note 163 (noting additionally that the suicide rate is disproportionately high); John Gramlich, *New Courts Tailored to War Veterans*, STATELINE (June 18, 2009), http://www.stateline.org/live/details/story?contentId=407573; Boczkiewicz, *supra* note 181.

186. Lithwick, *supra* note 175.

187. *Id.* (reporting figures from the Department of Veterans Affairs that veterans account for ten percent of those with criminal records).

underemployed who commit acts of domestic violence, consequently making comparisons between soldiers and workers politically problematical. In fact, the repercussions of combat are similar to the effects of chronic economic instability and loss of livelihood. Mental health problems among unemployed men who face few prospects of finding work have been described as "staggering" and include anxiety disorders, insomnia, headaches, and stomach ailments, an increase in alcoholism and drug abuse, and increased mental hospital admissions.[188] Displaced workers often experience a sense of alienation and disenfranchisement; suicide and attempted suicide rates increase, as do incidents of crime and homicide rates.[189] All in all, these are the very factors that contribute to acts of domestic violence.

Veterans' courts offer a promising way to address the structural circumstances of violence within the criminal justice system. These courts provide a successful model that considers the ways in which broader socio-psychological concerns contribute to criminal behaviors, and indeed suggests ways for the criminal justice system to consider the context of crime as condition of addressing such behavior.[190] Although these courts address the criminal behavior of a population for which there is already public sympathy and support, they may still serve to "insulat[e] judicial and correctional professionals from the converging pressures of the media and politicians, and rehabilitat[e] rehabilitation through a public campaign debunking the neoconservative myth that 'nothing works' when it comes to reforming offenders."[191]

The point here is not that these courts serve merely as forums to aid perpetrators with exculpatory strategies. Veterans' courts also demonstrate that efforts to "get at" the sources of gender violence must—at some point—address the material circumstances of domestic violence, not as a defense strategy but as a remedy to the structural sources of deviant behavior. These courts work in concert with a network of service providers to coordinate benefits for veterans and locate housing and employment for them.[192] Veterans' courts act to foster a "broader solidarity project"—that is, a social agenda that addresses poverty and homeless prevention, economic assistance, and distribution of services.[193]

Certainly, caution is warranted when promoting any type of problem-solving court and the diversionary programs they foster.[194] It bears repeating that such reforms often contribute to a net-widening phenomenon whereby the supervision and surveillance associated with special courts increase technical violations that result in over-criminalization and even greater punishment of

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188. *See* Weissman, *supra* note 11, at 418.

189. *Id.* at 419–20.

190. *See* Dickey & McGarry, *supra* note 151, at 338 (suggesting that justice requires this).

191. Wacquant, *supra* note 132, at 85 & n.56 (noting that studies have demonstrated that rehabilitation is more effective than retribution in changing the behaviors of criminals).

192. Martha Neil, *Special Courts to Help Veterans Are a Growing Trend Nationwide*, ABA J. (Nov. 10, 2011), http://www.abajournal.com/news/article/special_courts_to_help_veterans_are_a_ growing _trend_nationwide/; Katel, *supra* note 163 (describing the newly created Veterans' Justice Outreach Initiative).

193. GARLAND, *supra* note 7, at 199.

194. Weissman, *supra* note 169, at 245–46.

those defendants who do not complete their alternative treatment programs.[195] Veterans' courts, however, may function differently in that they provide a setting in which they are "authorized" to explore the social factors of crime and thus offer the possibility of meaningful reform. They may help to foster a consensus about courts attending to the structural sources of criminal conduct.These courts may inform and influence *ex ante* interventions as a matter of public policy and advocacy strategies—and thus serve as a model aptly suited for criminal intervention in domestic violence. Their demonstrated success rate provides greater motivation to consider this approach as a way for domestic violence cases as well.[196]

3. Intervening in Criminal Behavior Outside the Formal Criminal Justice System

The third model that more closely addresses issues relating to the phenomenon of domestic violence offers equally promising possibilities. The transformative justice approach focuses on criminal conduct and perpetrator accountability, and seeks to untether the response from criminal justice institutions. Transformative justice, Angela Harris explains, addresses violence both at the institutional and interpersonal levels.[197] It acknowledges the role of the state, communities, and families in creating systems of power and subordination particularly in regard to gender-based violence.[198] Advocates of transformative justice strategies challenge socially-constructed gendered norms that prevail in families and communities—norms that directly or indirectly sanction male violence—while at the same time addressing structural conditions and state violence.[199]

Harris cites references to Generation Five,[200] an organization that seeks to prevent and respond to child sexual abuse and whose goals include "transformation of the social conditions that perpetuate violence - systems of oppression and exploitation, domination, and state violence."[201] Generation Five supports survivors and holds abusers accountable "without relying on punishment, State violence, incarceration or policing," and addresses the problem within larger social movements focused on economic, racial, and gender injustice.[202]

Scholars who study criminal justice institutions recognize that the system "is long due for an overhaul."[203] The above models differ from the prevailing

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195. *Id. See also supra* note 170 and accompanying text.

196. *See* Zuber, *supra* note 181.

197. Angela P. Harris, *Beyond the Monster Factory: Gender Violence, Race, and the Liberatory Potential of Restorative Justice*, 25 BERKELEY J. GENDER L. & JUST. 199, 211 (2010).

198. *Id.* at 212.

199. *Id.* at 221, 224.

200. *Id.* at 212.

201. *See Transformative Justice*, GENERATION FIVE, http://www.generationfive.org/tj.php (last visited Mar. 1, 2013) (characterizing sexual abuse as a social and political issue); KERSHNAR, *supra* note 134, at 67.

202. KERSHNAR, *supra* note 134, at 5. The organization is also committed to protecting the rights of the accused, whether rightfully or wrongfully accused. *Id.* at 20.

203. Roger A. Fairfax, Jr., *From "Overcriminalization" to "Smart on Crime": American Criminal Justice*

criminal justice response to domestic violence, for they seek to affect the structural circumstances that produce crime. All three approaches call for increased community-oriented interventions and contribute to an understanding that an effective criminal justice strategy can take place in formal as well as informal settings.[204] They counteract institutional proclivities to over-criminalize and over-incarcerate, and mitigate the cumulative effects of inequality widely experienced in the criminal justice system.[205]

B. Domestic Violence Law and the Political Economy

However reorganized and reimagined, criminal approaches that focus on the behavior of individual perpetrators have limited impact on the socioeconomic conditions that contribute to domestic violence. To embrace legal strategies that seek both to remedy domestic violence and address economic justice requires a leap of faith. Courts have been hostile to claims based on poverty and class, relegating those categories to the lowest level of judicial review. Scholars and advocates, discouraged by the difficulty in pressing legal claims to address the practices of private capital, abandon efforts to focus on class issues within the law.[206] Moreover, domestic violence advocates may consider matters of economic justice too distant and abstract; they are more concerned with remedies that are immediate and individual, and thus less likely to depart from conventional approaches to mitigate gender-based crimes.

To approach the complexities of domestic violence through remedies that address socioeconomic conditions is not without challenges, of course, but such strategies are worthy of consideration for they offer far more comprehensive and nuanced remedies to domestic violence than the existing template of "punishment-as-deterrence" that has failed to reduce gender-based violence.[207] The law can and does—however infrequently—regulate the political economy, and domestic violence scholars should explore these possibilities. The Supreme Court has ratified the authority of municipalities to seize private property in the name of community welfare and economic development.[208] City planning and community development strategies also possess legal tools worth considering.

Reform—Legacy and Prospects, 7 J.L. ECON. & POL'Y 597, 597 (2011).

204. These approaches also differ from restorative justice models which only function after a crime has been committed and deal with the aftermath of criminal behavior. *See* John Braithwaite, *A Future Where Punishment Is Marginalized: Realistic or Utopian*?, 46 UCLA L. REV. 1727, 1743 (1999).

205. Bruce Western & Becky Pettit, *Incarceration & Social Inequality*, DAEDALUS, Summer 2010, at 8, 12 (observing that carceral inequalities affect not only those incarcerated but also their families and children).

206. *See* Martha R. Mahoney, *Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases*, 76 S. CAL. L. REV. 799, 844 (2003) (warning that the failure to develop a successful legal strategy to regulate deindustrialization further discourages consideration of these issues).

207. *See* Weissman, *supra* note 11, at 439–42 (discussing how Trade Adjustment Assistance and Workforce Investment programs for dislocated workers offer counseling services that could include screening of potential perpetrators and victims to identify the ways that economic instability contribute to domestic violence); Waldron, *supra* note 10, at 801 (observing that theories of justice do not seem to be designed for the real world as compared with socioeconomic rights).

208. Kelo v. City of New London, 545 U.S. 469 (2005); DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006).

Richard Schragger has described three strategies designed to constrain and redistribute capital at the local level.[209] First, he notes that municipalities can place conditions on development subsidies offered to private entities through contract terms, sometimes known as "clawback provisions," which bind developers to fulfilling certain obligations to promote local economic institutions.[210] Second, community benefit agreements (CBAs) may place conditions on capital through negotiated agreements which include labor friendly legislation such as minimum wage ordinances.[211] Finally, he identifies the use of local legislative authority to exclude capital deemed harmful to communities, such as anti-big box campaigns.[212]

Of these strategies, CBAs offer a promising way to address structural concerns and at the same time attend to issues pertaining to domestic violence. Generally, CBAs are private enforceable contracts negotiated between a prospective developer and community coalitions that include conditions relating to social justice issues.[213] These agreements also involve the relevant governmental entity that ultimately approves the development proposal.[214] The impetus for entering into CBAs originates from the specific impact of a proposed new development project or market initiatives that will affect the character of the community. Public subsidies or public approvals for private development projects provide community groups with the leverage needed to commence CBA negotiations.[215]

CBAs are not limited to the immediate physical or operational consequences of the development plan at issue—that is, they do not function as "single-issue commitments."[216] They address a broad array of socioeconomic conditions and often bring together diverse community groups.[217] Thus, as instruments of social justice, CBAs have direct and practical relevance to the domestic violence

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209. Richard C. Schragger, *Mobile Capital, Local Economic Regulation, And The Democratic City*, 123 HARV. L. REV. 482, 508–13 (2009).

210. *Id.* at 508–09.

211. *Id.* at 509.

212. *Id.* at 516.

213. The Staples Center expansion in Los Angeles is widely recognized as the leading example of a CBA whereby community groups negotiated for an "unprecedented package of concessions" and benefits in favor of a coalition of groups. *See* David A. Marcello, *Community Benefit Agreements: New Vehicle for Investment in America's Neighborhoods*, 39 URB. LAW. 657, 658 (2007); Patricia E. Salkin & Amy Lavine, *Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 113, 114 (2007) (noting that the negotiation may also include local government officials).

214. Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 59, 72 (2008) (noting the way in which governmental regulations are implicated in CBAs).

215. Marcello, *supra* note 213, at 659.

216. Julian Gross, *Community Benefits Agreements: Definitions, Values, and Legal Enforceability*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 35, 40 (2007); Marcello, *supra* note 213, at 662.

217. *See* SUSAN L. GILES & EDWARD J. BLAKELY, FUNDAMENTALS OF ECONOMIC DEVELOPMENT FINANCE, ix-x (2001) (describing an array of services and benefits that a developer might offer as a means of contributing toward the community good); Madeline Janis-Aparicio & Roxana Tynan, *Power in Numbers: Community Benefits Agreements and the Power of Coalition Building*, 144 SHELTERFORCE ONLINE, Nov.-Dec. 2005, *available at* http://www.nhi.org/online/issues/144/powerinnumbers.html.

movement.

CBAs work through a negotiation process that begins with the coalition members themselves. David Marcello describes the "Operating Principles" of a CBA coalition in New Orleans and demonstrates the ways in which coalition processes promote group debate, transparency, and accountability for the development of the goals of the group.[218] These processes provide the opportunity for domestic violence advocates to demonstrate the relationship between economic development issues and domestic violence.[219] CBA coalition membership provides the domestic violence movement with possibilities of developing new alliances with groups outside of the domestic violence advocacy movement who, in turn, may pay greater attention to concerns related to gender-based violence.

Through the CBA negotiation process, community groups gain assurances that economic development initiatives will benefit their constituents. CBAs have obtained living wage agreements, the development of local hiring and training programs, minority hiring programs, affordable housing developments, and day care centers—services that address structural concerns relevant to both perpetrators and victims.[220] CBAs could include provisions related to domestic violence more specifically by addressing immediate concerns for safety and support along with redistributive goals. For example, such agreements could readily include funding for domestic violence program, transitional housing, job training, education scholarships, counseling for victims, as well as abuser treatment programs.

Unlike public-private partnerships in which a private developer negotiates exclusively with government, CBAs place community coalitions at the center of the negotiation process.[221] CBAs enable social justice coalitions to leverage bargaining power in economic development processes and affect structural economic conditions.[222] In addition to the specific terms of the agreements, CBAs generally include monitoring and enforcement mechanisms to assure that developers abide by the negotiated terms.[223] CBAs thus are a democratizing force in government decision-making processes, monitoring, and enforcement.[224] Domestic violence advocates who are a party to these agreements help to constrain local governments that can no longer bypass community groups in

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218. Marcello, *supra* note 213, at 663–64.

219. *See supra* notes 78–91 and accompanying text.

220. Salkin & Levine, *supra* note 213, at 114; Schragger, *supra* note 209, at 509.

221. Marcello, *supra* note 213, at 660–61.

222. *See* William Ho, *Community Benefits Agreements: An Evolution in Public Benefits Negotiation Processes*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 7, 11–19 (2008). CBAs between community groups and developers are more likely to survive legal challenge than conditions imposed by government exactions. *See* Alvin Arnold, *Community Benefits Agreements*, MORTGAGE & REAL ESTATE EXECUTIVES REP. no. 9, 2 (2011). For a fuller discussion of the legal issues that arise with CBAs, see Salkin & Lavine, *supra* note 213; Michael L. Nadler, *The Constitutionality of Community Benefits Agreements: Addressing the Exactions Problem*, 43 URB. LAW. 587 (2011); Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 HARV. L. REV. 1153, 1205 (2011).

223. Cummings, *supra* note 214, at 72.

224. *Id.*; Marcello, *supra* note 213, at 665 (noting that CBAs "restore democratic legitimacy by affording community groups a voice").

effecting economic development in their localities. As participants in the process, they contribute to ameliorating some of the circumstances that produce domestic violence.

In sum, a CBA strategy would accomplish important goals: expanding domestic violence advocacy into broader social justice networks, obtaining support from coalition members to include contract conditions calling for specific resources to prevent and ameliorate the consequences of domestic violence, and addressing structural economic concerns. Such a strategy contributes to new opportunities to untether solutions to gender-based violence from a failed criminal justice system that has done little to ameliorate the problem of violence against women. A community-based strategy that incorporates solutions to alleviate economic disenfranchisement while paying particular attention to the issue of crimes against women would expand the parameters of domestic violence law. Given the complexity of the problem, efforts to develop new interventions to ameliorate gender violence ought to be promoted.

CONCLUSION

This Article uses the occasion of the contentious 2013 reauthorization of the Violence Against Women Act to address the complexities of domestic violence with attention to expanding the discursive framework and legal context beyond the existing paradigmatic criminal justice response. Such a shift does not discard other analyses, nor does it suggest abandoning the particular objectives of the domestic violence movement in favor of the objectives of socioeconomic justice. Rather, the relationship between individual harms and social structures requires multifaceted approaches. Harm is perpetrated and experienced under circumstances that must be addressed individually and immediately. Similarly, victims are entitled to immediate remedy and should not be expected to delay justice while better systems of amelioration develop. The point is not to exculpate perpetrators of gender violence but to construct interventions that include context to preclude consequences.

Strategies based on the causal connection between economic structures and domestic violence promise to be as difficult to develop as they will be to implement. Immediate pragmatic solutions to crimes of domestic violence do not exist. But efforts seeking to end domestic violence that do not consider the broader socioeconomic circumstances are ineffective, as articulated by scholars who study related human rights violations and egregious suffering. In the context of torture, the World Organization Against Torture states:"[s]ustainable protection against torture and other forms of violence cannot be conceived without conditions ensuring the respect of human rights, including economic, social and cultural rights of each individual."[225] Similar concerns have been expressed by public health scholars who have recognized the futility of focusing on individuals who make poor and costly behavioral choices regarding health:

> It is uninformative to conceptually isolate the behaviours and

225. Alan Wood, *Correlating Socio-Economic Inequality and Violence*, *in* ATTACKING THE ROOT CAUSES OF TORTURE: POVERTY, INEQUALITY AND VIOLENCE: AN INTERDISCIPLINARY STUDY 23, 33 (Thomas E. McCarthy ed., 2006).

> psychosocial orientations which are associated with poor health outcomes from their SES [socioeconomic status] roots. If the desire for economic efficiency is to be a central theme of the processes which shape late industrial societies, then it is entirely possible that the most efficient way to reduce the disease burden associated with poor health behaviours and psychosocial characteristics is to improve the socioeconomic conditions which generate them.[226]

Domestic violence scholars and advocates should join theorists and activists to develop political economic approaches to social harms. Compelling social and economic changes change behaviors, often profoundly. These circumstances call for the harnessing of creative and collective efforts, for the sake of the particular struggle against domestic violence, and for all forms of gender-based harms.[227] Indeed, addressing the structural determinants of domestic violence will not only improve outcomes for victims of such crime, but will also enhance theories of justice generally to the benefit of the larger goals of social justice.[228]

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226. J. W. Lynch et al., *Why Do Poor People Behave Poorly? Variation in Adult Health Behaviours and Psychosocial Characteristics by Stages of the Socioeconomic Lifecourse*, 44 SOC. SCI. & MED. 809, 817 (1997) (citation omitted).

227. *See* Julie Goldsheid, *Advancing Equality in Domestic Violence Law Reform*, 11 AM. U. J. GENDER SOC. POL'Y & L. 417, 424 (2003) (calling for a "reinvigorat[ion] [of] the important feminist tenet that law reform initiatives should be propelled by the needs of the women we represent").

228. Waldron, *supra* note 10, at 778 (suggesting that socioeconomic rights are best developed within the context of theories of justice).