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February 28, 2012

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

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Abstract

This article uses the occasion of the 2012 Reauthorization of the Violence Against Women Act (VAWA) to review the circumstances by which legal theory and social movement discourse have acted to 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 of the type that has functioned as “the ideological reflection of one’s own place in society” with insufficient attention to superstructures. It 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. It argues that 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. The Article then 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 2012 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 served to acknowledge that state legal structures had failed to provide 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 precisely those forums traditionally "reserved for issues where important national interests predominate."²

The pending reauthorization of VAWA 2012 provides an occasion to reexamine the legal premises that have shaped and subsequently continued to inform the conventional wisdom about the nature of and responses to domestic violence.³ The 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 *U.S. v Morrison*.⁴ The provisions that subsequently remained most "usable"—and certainly most available—favored the law enforcement and prosecutorial strategies funded by the Act.⁵

¹ Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 8, 16, 18, 20, 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," Speech reprinted at 138 Cong. Rec. S443-44 (Jan. 27, 1992). The civil rights remedy was subsequently struck down as unconstitutional in *U.S. v. Morrison* 529 U.S. 598 (2000). See *infra* note 4 and accompanying text.

³ S.1925, 112th Congress, Second Sess. (2011) available at <http://thomas.loc.gov/cgi-bin/query/z?c112:S.1925>:

⁴ *U.S. v. Morrison*, 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(a). See Margaret B. Drew, *Denying Choice Of Forum: An Interference By The Massachusetts Trial Court With Domestic Violence Victims' Rights And Safety*, 43 Suffolk U. L. Rev. 293, 323 (2010) (noting that the function of criminal courts in domestic violence cases are enhanced as a result of training and funding through VAWA). See

VAWA 2012 proposes to extend funding for important victim service. 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 function of historical matters of sovereignty struggles and conflicting federal and state statutes.⁶ The proposed reauthorization will no doubt, however, remain very much a product of the prevailing criminal justice paradigm from which it 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, it is unlikely that Congress will reauthorize a version of VAWA that responds to structural theories of criminal behavior. On those occasions when proponents of VAWA have addressed structure, the discourse has been generally limited principally to the failure of law enforcement agencies to arrest and the courts to punish perpetrators. The underlying premise that appears to drive the legal response is consistent with Rational Choice Theory, that is, that 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 which 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

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 U.S. Committee Senate Committee on Indian Affairs, Native VAWA draft bill, available at http://indian.senate.gov/issues/upload/Native_VAWA_draft_bill.pdf.

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 (1994) (the ethos of individualism focuses on crime as a function of the individual).

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.

The call for continued support for criminal laws as response to domestic violence is not without an internal logic, of course. Domestic violence advocates have long recognized that criminal justice promised immediate results, both politically and in terms of the urgent need to bring about a cessation of violence. Attempts to direct legal attention to the systemic sources of violence implied a daunting long-term process. In fact, structural inequality and socio-economic problems of the type that contribute to criminal behavior are rarely remedied in the legal system.⁹ As Martha Mahoney has observed, “[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 where 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 However understandable, the commonly-held assumption that gender-based violence is unrelated to the political economy serves to discourage efforts to pursue law-related structural reforms and thus hinders the development of legal responses to issues of economic inequality.

⁸ *Id.*

⁹ See Stephen Loffredo, *Poverty, Inequality, and Class In The Structural Constitutional Law Course*, 34 Fordham Urb. L.J. 1239, 1243-1244 (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 attached by those who would privilege property rights and the market).

¹¹ Deborah M. Weissman, *The Personal is Political—And Economic: Rethinking Domestic Violence*, 2007 B.Y.U. L. Rev. 387, 399-402 (2007); Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 Law & Pol’y 205, 208, 223 (1997).

This Article examines the ways that both legal theory and social movement discourse have acted to 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 of the type that has functioned as “the ideological reflection of one’s own place in society” with insufficient attention to superstructures.¹² It 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. It suggests new strategies with which to address the socio-economic complexities of domestic violence, without which the domestic violence movement risks failure to achieve the desired goals.

This Article is organized in three parts. Part I reviews the processes by which VAWA separated domestic violence from the context of political economy, specifically how legislative provisions and legal interpretations narrowed the scope of the remedy. It then examines the ways that the discourse of legal interventions has been shaped by the politics of what Angela Harris has called “unmodified feminism” as well as the politics of the domestic violence movement.¹³ It argues that feminism’s essentialist preoccupations with matters of identity together with the domestic violence movement’s inattention to poverty and economic inequality served to facilitate the ascendancy of the domestic violence/criminal justice paradigm. Part II examines the relationship between economic uncertainty and inequality, on the one hand, and

¹² Sonja Buckel & Andreas Fischer-Lescano, *Gramsci Reconsidered: Hegemony in Global Law* 22 Leiden J. of Int’l Law, 437, 441 (2009). Feminism is a broad term that covers a range of tendencies, branches, and different ideological strands. Here, I refer to feminism in as an “exclusionary practice and ideology” that emphasizes concern with the public-private divide and opposition to patriarchy and 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 and Society 680, 686 (2005) (identifying a type of feminism as “well positioned vis-à-vis the liberal order”).

¹³ See Angela Harris, *Race Essentialism in Feminist Legal Theory*, in *Critical Race Feminism*, 34, 37, 39 (Adrienne Katherine Wing, ed. 2003) (critiquing Catherine “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.

domestic violence, on the other. It argues that 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.

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 is to problematize domestic violence principally as idiosyncratic and aberrant rather than social and structural.¹⁴ It reviews the development of veterans' courts that 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 where sociological and structural explanations of behavior are relevant to the outcome and 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 insure 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. The Article concludes by

¹⁴ See Glenn C. Loury, *On Mass Incarceration* Daedalus Summer 2010, 134, 135.

¹⁵ Brian D. Feinstein and 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, 98 (2011).

explaining that to question 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 provocative challenge to the prevailing approaches to domestic violence. This critique must also be distinguished from those who would oppose the reauthorization of VAWA because it currently proposes to provide 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 socio-economic circumstances are perforce doomed to address only consequences, not cause.

I. Law as Social Action, Social Action as Law

VAWA has evolved within a dynamic interplay of law and social discourse in which the phenomenon of gender-based violence has been decontextualized from any useful political economic theoretical framework.¹⁷ Despite its auspicious beginnings evidenced by Congressional fact-finding on the relationship between domestic violence and the national economy, the implementation of VAWA has detached domestic violence from economic

¹⁶ See e.g., Amanda Terkel *Violence Against Women At Becomes a Partisan Issue*, Feb. 14, 2012, ((noting opposition to the VAWA bill because of enhanced provisions on behalf of LGBTQ persons) available at http://www.huffingtonpost.com/2012/02/14/violence-against-women-act_n_1273097.html?ref=politics *Objections to Reauthorizing the Violence Against Women Act*, Feb. 13, 2012 (transcript available at <http://thedianerehmsshow.org/shows/2012-02-13/objections-reauthorizing-violence-against-women-act/transcript>. See *infra* notes 29, 30 and accompanying text.

¹⁷ June Starr & Jane F. Collier, *Introduction*, 1, 6 in *History and Power in the Study of Law: New Directions in Legal Anthropology* (Starr & Collier, eds. 1989) (describing critical legal studies’ concern with the mutual construction of law and social order).

circumstances. Legal developments have influenced and been influenced by the prevailing practice of identifying domestic violence as a phenomenon unrelated political economic structures.¹⁸ These factors have facilitated the ascendancy 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 have occurred throughout the United States.

A. VAWA and the Law: Rendering Invisible the Economic

In 1994, Congress enacted VAWA, 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 new 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 provided ample evidence to document the failure of government to respond to violence against women and establish the nexus between violence against women and economic concerns. The civil rights remedy was inscribed in the 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

¹⁸ *Domestic Violence*, Congressional Record, 112th Congress (2011-2012) H7337, Nov. 4, 2011, Comments of Rep. Himes quoting the National Coalition Against Domestic Violence that domestic violence is “a crime which knows no class boundaries,”) available at <http://www.gpo.gov/fdsys/pkg/CREC-2011-11-04/pdf/CREC-2011-11-04-pt1-PgH7337-2.pdf#page=1>. See Rebecca J. Cook, *Structures of Discrimination* 34 (2011) available at <http://ssrn.com/abstract=1960188>

¹⁹ See generally *Domestic Violence: Not Just a Family Matter*: Hearing Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary, 103d Cong. (1994) [hereinafter 1994 H.R. Hrg.]; Crimes of Violence Motivated by Gender: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 103d Cong. (1993) [hereinafter 1993 H.R. Hrg.]; Violence Against Women: Fighting the Fear: Hearing Before the Senate Comm. on the Judiciary, 103d Cong. (1993) [hereinafter Nov. 1993 S. Hrg.]; Violent Crimes Against Women: Hearing Before the Senate Comm. on the Judiciary, 103d Cong. (1993) [hereinafter Apr. 1993 S. Hrg.]; Hearing on Domestic Violence: Hearing Before the Senate Comm. on the Judiciary, 103d Cong. (1993) [hereinafter Feb. 1993 S. Hrg.]; Violence Against Women: Hearing Before the Subcomm. on

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 in *U.S. v. Morrison* declared that portion of the Act unconstitutional and beyond the reach of the Commerce Clause.²⁰ The Act, considered contentious because of the civil rights remedy, was never voted on as a stand-alone bill. Instead, it was enacted as Title IV of the Violent Crime Control and Law Enforcement Act and part of an Omnibus Crime bill—the largest crime bill in U.S. history—described by some scholars as “draconian.”²¹ Once the civil rights remedy was nullified, VAWA developed into a statute primarily concerned with criminal prosecution and continued to expand a criminal justice strategy through subsequent reauthorizations. The principal purpose of the 2000 VAWA reauthorization, which added new domestic violence-related crimes, was to advance the goal of successfully prosecuting batterers.²² While the 2000 Act authorized an important new remedy for immigrant women victims of crime, the stated

Crime and Criminal Justice of the House Comm. on the Judiciary, 102d Cong. (1992) [hereinafter 1992 H.R. Hrg.]; Violence Against Women: Victims of the System: Hearing Before the Senate Comm. on the Judiciary, 102d Cong. (1991) [hereinafter 1991 S. Hrg.]; Women and Violence: Hearings Before the Senate Comm. on the Judiciary, 101st Cong. (1990) [hereinafter 1990 S. Hrg.]; Domestic Violence: Terrorism in the Home: Hearing Before the Subcomm. on Children, Family, Drugs, and Alcoholism of the Senate Comm. on Labor and Human Resources, 101st Cong. (1990) [hereinafter 1990 S. Labor Hrg.]. For a useful examination of the history of VAWA, see generally Victoria F. Nourse, *Where Violence, Relationship, and Equality Meet: The Violence Against Women's Act's Civil Rights Remedy*, 11 Wis. Women's L.J. 1 (1996).

²⁰ 529 U.S. 598 (2000).

²¹ See *supra* note 1. 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. 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). 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).

²² Pub. L. 106-386, Div. B, Title V, § 1513(a), Oct. 28, 2000, 114 Stat. 1533. 42 USC 3796gg, *Grants to Combat Violent Crimes Against Women, Purpose of Program and Grants* (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).

purpose of the new nonimmigrant visa classification was to strengthen the ability of law enforcement agencies to prosecute crimes.²³ Moreover, although 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.²⁴ The reauthorization bill in 2005 provided new law enforcement tools, most notably the DNA Fingerprint Act described as a “stunning extension of government power,” and has raised concerns that poor men and especially men of color may be “catalogued” for purposes of wrongful intrusion by the state.²⁵ VAWA funds— some of which came from savings accrued by reductions in the federal workforce—have been allocated primarily and increasingly to police, prosecutors, and funding for jails.²⁶

VAWA 2012, like the prior two reauthorizations, proposes to continue much needed funding for a range of services for victims of gender-based violence.²⁷ Notably, the bill would grant clear jurisdictional authority over such acts of domestic violence that occur on tribal lands to tribal courts. VAWA 2012 would expand important services to youth and supports sexual assault victims who suffer delays in criminal rape investigations due to backlogs in the

²³ Garrine P. Laney, *Violence Against Women Act: History and Funding* 3, June 9, 2005, CRS Report for Congress, available at http://www.ilw.com/immigrationdaily/news/2005_0802-crs.pdf.

²⁴ Pub.L. 106-386, Div. B, Title II, Sec. 1201 (d) (3), Oct. 28, 2000, 114 Stat. 1505.

²⁵ Dorothy Roberts, *Collateral Consequences, Genetic Surveillance, and the New Biopolitics of Race*, 54 How. L.J. 567, 571 -572 (2011). 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), http://www.ms.foundation.org/user-assets/PDF/Program/safety_justice.pdf [hereinafter Safety and Justice].

²⁶ Nourse, *supra* note 19, at 33-34. Garrine P. Laney, *Violence Against Women Act: History and Funding*, Feb. 26, 2010, CRS-7-5700. Laney, *supra* note 23, at 11-12. See Lisa R. Pruitt, *Gender, Geography & Rural Justice* 23 Berkeley J. Gender L. & Just. 338, 388 (2008).

²⁷ See generally, *Violence Against Women Reauthorization Act Of 2011, Section By Section Analysis*, available at <http://www.leahy.senate.gov/imo/media/doc/SectionBySection-ViolenceAgainstWomenReauthorizationAct.pdf>.

inventorying of rape kits.²⁸ The original version of the bill includes a non-discrimination grant conditions clause that includes sexual orientation and seeks to clarify and improve protections for battered immigrants.²⁹ 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. Amendments to the bill would not only countermand improved protections for immigrants introduced in the original version but would add harsher penalties to the Immigration Act with regard to matters unrelated to domestic violence.³⁰ The vast portion of the proposed funding is allocated to police and prosecutors to encourage arrests and prosecution.³¹ Indeed, much of the congressional testimony offered in support of the 2012 reauthorization of VAWA privileged criminal justice remedies to domestic violence.³² Certainly some witnesses

²⁸ S. 1925, Title I—Enhancing Judicial and Law Enforcement Tools to Combat Violence Against Women, Sec. 101. Stop Grants Section 101, at <http://www.gpo.gov/fdsys/pkg/BILLS-112s1925is/pdf/BILLS-112s1925is.pdf>.

²⁹ *Id.* Section 3, *Universal Definitions and Grant Conditions*, Title VIII, *Protection of Battered Immigrants*. The provisions to prohibit discrimination against gays and lesbians and improved remedies for immigrants have been met with significant Senate Republican opposition. *See Republicans Retreat on Domestic Violence*, N.Y. Times, Feb. 9, 2012 at A26.

³⁰ *See Prepared Statement of Senator Chuck Grassley* Feb. 2, 2012 (describing some of the terms of his proposed Amendment which would add the requirement of a successful prosecution of the perpetrator for U visa applicants, and would add a new aggravated felony crime to the Immigration and Nationality Act) available at http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=38826; *Senate Panel Approves VAWA Reauthorization*, <http://www.womenspolicy.org/site/News2?page=NewsArticle&id=10799>

³¹ *See The Continued Importance of the Violence Against Women Act*, Hearing before the Committee on the Judiciary, United States Senate, June 10, 2009, *Opening Statement of Sen. Leahy*, 1, 2. *See* Caroline Bettinger-López, *et al.*, *VAWA Is Not Enough: Academics Speak Out About VAWA* (2012) (analyzing VAWA 2012 funding and noting that criminal justice strategies funds were approximately 3 times greater than civil legal assistance allocations, housing, and training for family court judges combined) available at <http://www.feministlawprofessors.com/2012/02/academics-speak-about-vaawa-reauthorization/>.

³² 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. *Oversight Hearing on Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters*, July 14, 2011, Committee on Indian Affairs, U.S. Senate, (testimony of Tom Perrelli, Associate Attorney General describing proposed reforms for Native American women). Statement of Susan B. Carbon, “*Rape in the United States: the Chronic Failure to Report and Investigate Rape Cases*,” Committee on the Judiciary United States Senate, Sept. 14, 2010, available at <http://judiciary.senate.gov/pdf/09-14-10%20Carbon%20Testimony.pdf>. *See* Testimony of Scott

acknowledged the relationship between economic strain and domestic violence, and in fact confirmed that domestic violence rates increased during times of economic downturn. Nevertheless, almost all testimony prioritized the continued allocation of VAWA funds to enhance the criminal justice system.³³

These circumstances demonstrate the constitutive power of law and its 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.”³⁴ The Court continued to separate the phenomenon of domestic violence from economic concerns in *Castle Rock v. Gonzales*,³⁵ where 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 *U.S. v. Roth*.³⁶ 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 although state statutes authorize such relief.³⁷ Tort claims by victims seeking compensatory damages for acts of domestic

Berkowitz before the United States Senate Committee on the Judiciary, September 14, 2010 <http://judiciary.senate.gov/pdf/10-09-14BerkowitzTestimony.pdf>.

³³ See *supra* note 31, *The Continued Importance of the Violence Against Women Act*, Hearing before the Committee on the Judiciary, United States Senate, June 10, 2009, Questions and Answers to Witnesses, p 34, 40-41, 44- 48, 50-51.

³⁴ 529 U.S. at 613.

³⁵ 545 U.S. 748 (2005).

³⁶ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 571(1972).

³⁷ North Carolina Governor’s Crime Commission, *Child Support Application Filing Rates and Domestic Violence Protection Order Cases*, (2007) (noting that judges failed to order child support where requested in 80 percent of the cases) (report on file with author). Deborah Epstein, *Effective Intervention in Domestic Violence Cases; Rethinking*

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.³⁸

The scant attention given to economic hardship as a consequence of domestic violence makes it all but impossible to consider economic hardship as a cause of domestic violence.³⁹

The political economic circumstances of the perpetrator are deemed irrelevant. “Mainstream” criminal theories understand acts of deviant behavior as deeds of individual volition. Indeed, the legislative recommendations that urge increased arrests and prosecutions are based on theories 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.⁴⁰

Criminal justice remedies predominate, reinforced by the prevailing belief that to punish is to deter.

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* (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).

³⁸ Martha Chamallas & Jennifer B. Wiggins, *The Measure of Injury: Race, Gender, and Tort Law* 3, 73(2010).

³⁹ 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).

⁴⁰ See *supra* note 7. Kathleen Ho, *Structural Violence as a Human Rights Violation* 4 Essex Human Rights Rev. 1, 3(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).

The point here is not to oppose the reauthorization of VAWA.⁴¹ Rather it is 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 all but impossible to obtain. These legal developments, moreover, 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.⁴² But law also responds to and is a result of social movements.⁴³ Efforts by feminists and the domestic violence movement to challenge prevailing power hierarchies and improve the condition of women by over-reliance on the criminal justice system have, in fact, contributed to a skewed understanding of domestic violence.⁴⁴

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 by way of a political economic analysis. During the 1970s, the domestic violence advocacy movement emerged within second-wave feminism, identified with a “fundamental emancipatory promise with its expanded sense of injustice and its structural critique of society.”⁴⁵ Second wave

⁴¹ The bill has been 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 note 30, and accompanying text.

⁴² Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* 34 (1998) (observing that law functions not only “to shape social action but as social action”)

⁴³ Menachem Mautner, 96 Cornell L. Rev. 839, *Three Approaches to Law and Culture* 96 Cornell L. Rev. 839, 862 (2011).

⁴⁴ See generally Safety And Justice, *supra* note 25.

⁴⁵ Nancy Fraser, *Feminism, Capitalism, and the Cunning of History*, 56 New Left Review 97, 101 (2009). Herbert Marcuse, *Marxism and Feminism*, 17 Differences 147 (2006) (“Feminism is a revolt against decaying capitalism.”). See also Wendy Brown, *Women’s Studies Unbound: Revolution, Mourning, Politics*, 9 Parallax 3, 8 (2003) (describing feminism as “born of the utopian aspirations”).

feminism promoted an intersectional understanding of oppression that focused on class, race, sexuality as well as gender.⁴⁶ 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.”⁴⁷

Political scientist Nancy Fraser has studied the development of feminism and notes that with the subsequent shift of feminism from the structural to the cultural, the politics of identity eclipsed political economic concerns.⁴⁸ Other scholars similarly have observed that feminist theory abandoned a radical critique at a time of a shift in global economic structures, including outsourcing and globalization, when wealth concentrations grew more extreme and economic inequality increased.⁴⁹ They attribute the rise of identity politics to the professionalization and cooptation of feminism and a failure to conceive of alternatives to capitalism.⁵⁰ Fraser posits that as a result of these circumstances, “second-wave feminism has unwittingly provided a key ingredient of the new spirit of neoliberalism.”⁵¹ The trope of feminist politics undermined class-based solidarity efforts, failed to challenge the social construction of status categories, and

⁴⁶ Fraser, *supra* note 45, at 103.

⁴⁷ Mae C. Quinn, *Feminist Legal Realism* 35 Harv. J. of Law and Gender 1, 20 (2012) (describing the viewpoint of feminist legal scholars advocated that Legal Feminism should go beyond the academy and seek to transform fundamental political and social values).

⁴⁸ Fraser, *supra* note 45, at 109. See also Mary Bernstein, *Identity Politics*, 31 Annu. Rev. Sociol. 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).

⁴⁹ Brown, *supra* note 48, at 3 (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 Review of Books, 13 Mar 3, 2011.

⁵⁰ Bernstein *supra* note 48, at 52 (citing Wrong and Bell).

⁵¹ Fraser, *supra* note at 45, at 111. Bernstein, *supra* note 48, at 64 (noting that identity politics has been coopted as a result of the commodification of interests and differences).

ignored the intersection of identities.⁵² Identity politics served a politically important purpose as a means of insights about the condition of women, of course. But the emphasis on identity as an organizing politics has produced, if not widened, divisions among groups who are marginalized differently and have further weakened the capacity for broad political alliances. As the scholarly critiques have demonstrated, greater attention paid to “difference” has signaled feminism’s retreat from the politics of redistribution in favor of the politics of recognition.⁵³

Identity politics has served as the core organizing tool for feminists engaged in the domestic violence movement. Identity politics sought to create 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. The very concept of women-as-victims emerged as an identity constructed vis-à-vis a male partner with little attention to economics. 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.⁵⁴ By constructing the problem as a “classless” one, advocates ignored the relationship between domestic violence and economic circumstances, notwithstanding evidence to the contrary.⁵⁵ Indeed, domestic violence advocates might be described as having entered into a “liberal bargain” whereby they sought to

⁵² Bernstein, *supra* note 48, at 52, 57.

⁵³ Nancy Fraser and Nancy A. Naples, *To Interpret the World and to Change It: An Interview with Nancy Fraser* 29 *Signs* 1103, 1112 (2004).

⁵⁴ Ralph Henry, *Domestic Violence and the Failures of Welfare Reform: The Role for Work Leave Legislation*, 20 *Wis. Women’s L.J.* 67, 68 (Spring 2005).

⁵⁵ 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, 286 (describing the process of essentializing battered women across race and class lines). See *infra* note 11 and accompanying text.

accommodate themselves to the very ideology that sustains structural inequality.⁵⁶

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.⁵⁷ 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. The emphasis on criminal law responses and the failure to situate gender-based violence within a broader structural framework, moreover, 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.⁵⁸

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.⁵⁹ Attention to socioeconomic factors as causal factors of domestic violence is all but absent from domestic violence theory and practice. Having emphasized “the wrongs done to women, and not the socially

⁵⁶ Sa'ar *supra* note 12, at 681.

⁵⁷ Jonathan Simon, *Megan's Law: Crime And Democracy In Late Modern America*, 25 Law & Soc. Inquiry 1111, 1131-1132, 1137 (2000) (citing Wendy Brown, *States of Injury*, 1995).

⁵⁸ See generally Jonathan Simon, *Governing Through Crime, How the War on Crime Transformed American Democracy and Created a Culture of Fear* (2007).

⁵⁹ Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 Wash L. Rev. 581, 582 (2009).

produced capacity for women to be wronged, to be victims,” feminists have narrowed the scope for addressing structural determinants of gender-based violence.⁶⁰

Feminism’s abandonment of the emancipatory project has had a profound impact on the strategies deployed to address domestic violence in ways previously under-problematized. The consequences of these developments, however, are well known. The evidence suggests that the criminal justice system often inflicts great harm to women of color, poor women, and immigrant women, and deprives women of agency.⁶¹ New reports suggest that domestic violence statutes may in fact produce over-criminalization outcomes to the detriment of both women and men.⁶² Mandatory arrest policies in cases of domestic violence have contributed to increasing arrest rates even outside the context of intimate partner incidents.⁶³ 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.⁶⁴

The domestic violence movement has evolved principally into a legal movement embedded within the criminal justice system. But the causes of violence—including gender

⁶⁰ Brown, *supra* note 45, at 10. See Bernstein, *supra* note 48, at 50 (describing concerns related to demands for group-differentiated citizenship rights”). Kerry Rittich, *Engendering Development/marketing Equality*, 67 Alb. L. Rev. 575, 591(2003) at 591 (arguing that feminism failure to address economic justice undermines its central argument for women’s rights).

⁶¹ Weissman, *supra* note 11, 399-402; Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 Buff. Crim. L. Rev. 801, 852-854 (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); Jeannie Suk, *At Home In The Law: How The Domestic Violence Revolution Is Transforming Privacy* (2009). See Hadar Dancig-Rosenberg & Dana Pugach, *Pain, Love, and Voice*, 18 Mich. J. of Gender and Law 423, 469 (2012).

⁶² Alice Ristroph, *Criminal Law in the Shadow of Violence* 62 Ala. L. Rev. 571, 601(2011) (pointing out that these statutes may subject nonviolent conduct to the proscriptions of penal law enacted to punish violence).

⁶³ 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).

⁶⁴ 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).

violence—are varied and complex and indeed are often the product of historical and structural conditions.⁶⁵ 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 consider the relevance of political economy as the context for gender-based violence.

II. Paying Attention to Class and Inequality

As the issues of gender-based violence moved from private matters to public concerns, feminist scholarship gave increasing emphasis to patriarchy as 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 where men as a group dominate women as a group.⁶⁶ An expanding scholarship on the effect of structural economic dislocation, however, suggests a far-more complicated set of factors contributing to domestic violence. It is no longer sufficient to explain domestic violence in terms of patriarchy as a system separated from the social structures that reinforce the multiple power relationships of daily life.⁶⁷ Other areas of scholarship and advocacy have acted as 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. In fact, these approaches tend to

⁶⁵ Mary R. Jackman, *Violence in Social Life* 28 Annu. Rev. Sociol. 387, 401, 407 (2002).

⁶⁶ Gwen Hunnicutt, *Varieties of Patriarchy and Violence Against Women Resurrecting “Patriarchy” as a Theoretical Tool*, 15 VAW 553,556 (2009).

⁶⁷ *Id.* at 553, 560 (noting that men’s behavior is influenced, if not determined, by social structures and linked to pathological social arrangements).

foreclose the possibility of advancing socio-economic rights.⁶⁸ As Bernard Harcourt has explained:

...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.'⁶⁹

Many advocates have remained 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.⁷⁰ Social science research has provided persuasive evidence of linkages between economic adversity and gender-based violence.⁷¹ Ethnographic studies have chronicled 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.⁷² This body of research reveals the ways that individual perceptions of declining economic well being contribute to family distress, conflict, and violence.⁷³ Downward mobility

⁶⁸ See Waldron, *supra* note 10, at 775 (noting that some theories of justice appear to be hostile to socioeconomic rights).

⁶⁹ Bernard E. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* 204 (2011).

⁷⁰ See Weissman, *supra* note 11, at 406-423. Scott A. Melzer, *Gender, Work, and Intimate Violence: Men's Occupational Violence Spillover and Compensatory Violence*, 64 J. of Marriage and Family, 820 (2002).

⁷¹ Melzer, *supra* note 70. Katherine M. Neckerman & Florencia Torche, *Inequality: Causes and Consequences* 333 Annu. Rev. Sociol. 335, 344 (2007), Christopher R. Browning, *The Span of Collective Efficacy: Extending Social Disorganization Theory to Partner Violence*, 64 J. of Marriage and Family 833,835 (2002).

⁷² See Brian Phillips, *Global Production and Domestic Decay*, 107-108 (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* 49-50 (John Gaventa et al. eds., 1989); 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*) (noting that domestic violence rates rose in Youngstown after the demise of steel plants).

⁷³ See Oren M. Levin-Waldman, *Plant Closure, Regulation, and Liberalism* 3, 23 (1992) (noting that worker displacement increases rates of spouse 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.,

and economic inequality weakens social capital which helps to sustain community norms against domestic violence.⁷⁴

Recent reports since the 2008 recession have documented the rise of domestic violence in direct proportion to economic hardship.⁷⁵ The National Domestic Violence Hotline reported that the national increase in telephone calls in 2009 was the effect of a decline in household finances and financial strain.⁷⁶ Since 2008, the judicial system has experienced a significant rise in the number of family violence case filings attributed to the ripple effect of the recession.⁷⁷ New York State recorded an 18 percent increase in family violence cases, which has turned “the courts into theaters of economic crisis” that has reached deep into the lives of formerly middle-

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 72, 49-50 (describing negative effects on family life after plant closings); Judy A. Van Wyk et al., in *Detangling Individual-, Partner-, and Community-Level Correlates of Partner Violence*, 49 Crime & Delinquency 412, 424-29 (2003) (observing that subjective financial satisfaction is tied to domestic violence).

⁷⁴ Neckerman and Torche, *supra* note 71, 344; Browning, *supra* note 71, at 834. Suneeta Krishnan, *Do Structural Inequalities Contribute to Marital Violence? Ethnographic Evidence From Rural South India*, 11 VAW 759, 772 (2005).

⁷⁵ *Domestic Abuse On Rise As Economy Sinks*, Associated Press, April 10, 2009, http://www.msnbc.msn.com/id/30156918/ns/health-health_care/t/domestic-abuse-rise-economy-sinks/#.TpSz4LK8B2I Manasi Sharma, *Recession-Related Domestic Violence On The Rise* Apr. 10, 2009, <http://www.globalenvision.org/2009/03/26/recession-related-violence-rise>. See e.g., *supra* note 31 *The Continued Importance of the Violence Against Women Act* p.34 (Ann Burke, *Response to Questions from Senator Arlen Specter*, (reviewing national media reports). Philip N. Cohen, *Recession Begets Family Violence* Jan. 2, 2010 available at http://www.huffingtonpost.com/philip-n-cohen/recession-begets-family-v_b_409502.html. *On a Losing Streak*, 398 The Economist 35, 36 (3/26/2011) (describing how the foreclosure crisis contributes to increasing rates of domestic violence and family dysfunction).

⁷⁶ *Domestic Abuse On Rise*, *supra* note 75. 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). A more recent study confirmed that the unemployed are experiencing increased emotional or mental health problems and family conflict. Michael Cooper & Allison Kopicki, *Facing Hardship, Jobless Say They Have Hope*, N.Y. Times, Oct. 27, 2011 at A1.

⁷⁷ Neeta Pal, *Cuts Threaten Civil Legal Aid*, Brennan Center for Justice, Apr. 11, 2011 http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services1/.

class families.⁷⁸ A reduction in violent crime rates in Philadelphia in 2009 was not reflected in the number of domestic violence cases. On the contrary, domestic violence homicides increased 67 percent—all linked to deteriorating economic conditions.⁷⁹ In the same year, domestic violence shelters reported a 75 percent increase in the number of victims seeking help, most of whom identified financial strain as cause of the violence.⁸⁰ 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.⁸¹

Market forces have the power to frustrate established patterns of daily life and may be disruptive within the intimate spaces of the household. Current conditions of chronic unemployment have subjected families to withering tensions. The economic and occupational stress produced by these events is often mediated through socially-determined norms of masculinity and produce havoc in the private domains of the household, undermining socially constructed gender-roles pertaining to work and wages that dominate most families.⁸² Economic crisis and the loss of work must be understood as a flash-point that acts to reveal the ways that gender norms are embedded in all social relationships and especially work and wage-related

⁷⁸ William Glaberson, *The Recession Begins Flooding Into the Courts*, N.Y. Times, Dec. 27, 2009 at A1.

⁷⁹ Ria Misra, *Domestic Violence and Recession -- 35 Dead in Philadelphia in '09*, Jan. 1, 2010 available at <http://www.politicsdaily.com/2010/01/01/domestic-violence-and-recession-35-dead-in-philadelphia-in-0/>

⁸⁰ *Mary Kay Truth About Abuse Survey*, 2-4, <http://www.marykay.com/content/company/2011survey.pdf>.

⁸¹ Judith Warner, *What the Great Recession Has Done to Family Life*, N.Y. Times, Aug. 8, 2010 at MM9.

⁸² 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 VAW 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 428-431; Melzer, *supra* note 36, at 822.

circumstances.⁸³ Simply put, the likelihood of partner violence increases in structurally disadvantaged households and communities.⁸⁴

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 ensuing economic dependencies precipitate and often perpetuate abusive intimate relationships. Some domestic violence programs provide job and financial literacy counseling to enable women to gain economic independence.⁸⁵

But current strategies have not been contextualized within current economic conditions, where employment opportunities are limited and the responsibility for coping with economic crises has shifted from government and employers to individuals and families.⁸⁶ The possibilities of economic independence are often beyond the reach of vast numbers of women

⁸³ Torry D. Dickinson & Robert K. Schaeffer, *Fast Forward: Work, Gender, and Protest in a Changing World* 23 (2001).

⁸⁴ Van Wyk *et al.*, *supra* note 73, 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 of 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, 1101-1106 (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).

⁸⁵ Charlie Herman, *Empowering Women Through Financial Literacy*, Marketplace Money Oct. 7, 2011 (transcript available at <http://marketplace.publicradio.org/display/web/2011/10/07/mm-empowering-women-through-financial-literacy/>).

⁸⁶ 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 S. Hacker, *The Privatization of Risk and the Growing Economic Insecurity of Americans* (Feb. 14, 2006), <http://privatizationofrisk.ssrc.org/Hacker>

who confront insurmountable obstacles gaining access to the wage-labor market.⁸⁷ Just as importantly, current approaches to financial literacy often encourage women to function “in an unfettered market dominated by individual empowerment and choice where responsibility remains within the limits of the consumer.”⁸⁸ So-called “empowerment strategies” are funded by large corporations whose purpose differs from the goals of social justice movements, and more specifically: the well-being of women.⁸⁹ Such strategies fail to address the structural underpinnings that produce financial distress and reproduce inequality.⁹⁰ Instead, they depoliticize struggles for economic equality and in fact often have limited “real-world” application.⁹¹ They 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.⁹² In fact, some victims of domestic violence have identified predatory

⁸⁷ 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* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2891556/>. Browning, *supra* note 71, at 835. Norb Franz, Judge *Fines Woman \$500 For Dropping Abuse Claim*, April 24, 2007, Macomb Daily (“He’s the breadwinner and I need him at home with me.”).

⁸⁸ Martin Saavedra, *Educated Consumer? Foreclosure Crisis and Neoliberal Subjectivities* 9 (2011) (paper delivered for Classcrits Conference, Washington College of Law, Washington, DC Sept. 24, 2011, (paper on file with author). See Herman, *supra* note 45, (noting that some literacy programs some of which operate out of prosecutor’s offices, describing literacy counseling that includes investing in the stock market).

⁸⁹ Rebecca Hall, Paper Abstract, ClassCrits IV, Criminalizing Economic Inequality, Sept. 23-24, 2011 at American University Washington College of Law (noting that large corporations like Allstate and cosmetics companies often fund “empowerment projects” for victims of domestic violence) (abstract on file with the author).

⁹⁰ Saavedra *supra* note 88, at 9-10.

⁹¹ Dag Leonardsen, *Empowerment in Social Work: An Individual vs. Relational Perspective* 16 Int. 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).

⁹² Mercedes González de la Rocha, *The Construction of the Myth of Survival*, 38 Development and Change 45, 48, 62 (2007).

lending as the most significant obstacle to economic independence.⁹³ 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, they neglect to address the structural causes of the violence itself.⁹⁴ The focus has been on the symptoms of oppression rather than sources of oppression that affect men and women.

Social problems such as domestic violence are often outcomes of both material conditions and cultural systems by which men and women are socialized into the conventions of daily life.⁹⁵ Without a theoretical framework with which to construct a usable explanatory model to addresses criminal behavior as a function of social systems and economic structures, remedies are doomed to focus on consequences, not cause.

B. The Gap in Scholarship

That much of the literature on domestic violence continues to pay scant attention to matters of political economy suggests that this is a scholarship that 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

⁹³ Rebecca Hall, *Utah Domestic Violence Council Economic Justice and Project Final Report* 11, 39 (2011) (reviewing findings after a study on economic empowerment efforts with victims of domestic violence in the state of Utah) available at <http://ssrn.com/abstract=1962781>.

⁹⁴ 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>.

⁹⁵ See Ardha Danieli, *Gender: The Missing Link in Industrial Relations Research*, 37 *Indus. Rel. J.* 329, 331 (2006) (describing how social practices are produced).

to the determinants of deviant behavior.⁹⁶ The Occupy Wall Street movement has, of course, drawn national attention to issues of economic inequality and wealth redistribution. New scholarly networks have emerged to challenge the premise of the “free market” paradigm and to offer new solutions for a wide range of social problems.⁹⁷ Researchers representing diverse branches of study emphasize a relational approach to the interrogation of human rights violations. Others who study international law have similarly encouraged a class approach to the issue.⁹⁸ Indeed, the very relationship between socioeconomic rights and broad principles of justice has recently developed into a subject of concern in the realm of law and philosophy.⁹⁹ These approaches share a common commitment to the development of a methodology that contextualizes acts of deviance and social harm in a broader socioeconomic framework.¹⁰⁰

The 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 and economic vulnerability, on the one hand, and genocide on the other. Amelioration of economic inequality is seen as a minimum condition to reduce the threat of mass killings and other forms

⁹⁶ See Terry Eagleton, *Indomitable*, 13, 14 London Review of Books, Mar, 3, 2011 (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 (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”).

⁹⁷ *About ClassCrits* (describing a recent network of scholars and activists who seek to engage in a critical analysis of law and the economy) <http://classcrits.wordpress.com/about/>.

⁹⁸ B.S. Chimini, *Prolegomena to a Class Approach to International Law*, 21 European J. of International Law 57 (2010).

⁹⁹ Waldron, *supra* note 10, at 775.

¹⁰⁰ Calvin Morrill, *et al.*, *Seeing Crime and Punishment Through a Sociological Lens: Contributions, Practices, and the Future*, 2005 U. Chi. Legal F. 289, 295-296 (2005).

of political violence.¹⁰¹ Other recent studies of genocide have also identified economic globalization as source of violence. These analyses have demonstrated that market-driven development strategies have exacerbated inequality and accelerated degradation, often with tragic consequences, and perhaps nowhere more tragically than the mass murders in Rwanda.¹⁰² The UN Secretary General's Report on "Implementing the Responsibility to Protect" against genocide and other crimes against humanity warned that developed countries may themselves be vulnerable to endemic violence as an outcome of deteriorating social and economic circumstances.¹⁰³

The scholarship addressing post-conflict societies has similarly argued that the relationship between violence—male violence in particular—and economic and social insecurity must be addressed to reduce threats of continued violence.¹⁰⁴ Studies of torture have established that acts of inhumanity cannot be addressed solely within the realms of civil and political rights, but must also attend to matters of wealth inequality and income insecurity: precisely those conditions that produce both torture victims and perpetrators.¹⁰⁵

¹⁰¹ *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, 14 par. 33, Feb. 18, (2003) A/HRC/10/30). For example, the recent report of the UN Special Advisor on Genocide urged the need to mitigate increasing poverty and inequality in order to prevent political violence in Kenya. *Id.*

¹⁰² 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).

¹⁰³ *Implementing The Responsibility To Protect--Report Of The Secretary-General*, A/63/677, January 2009 par. 21 p. 13.

¹⁰⁴ Naomi Cahn, *Gender, Masculinities and Transition in Conflicted Societies* 44 N. 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, including programs that seek to address issues of socially-constructed hyper-masculinity associated with violence." *Id.* at 19

¹⁰⁵ Louise Arbour, *Preface* 10, 34, 39, 42 in *Attacking the Root Causes of Torture, Poverty, Inequality and Violence, An Interdisciplinary Study*, (Thomas E. McCarthy, ed. 2006). The UN has emphasized the human rights cannot be protected without consideration of economic cultural and social rights. Nathalie Milvalez, *Torture and Violations of*

Recent articles on child trafficking and sexual exploitation have criticized the failure to address systemic sources of the problem and challenge the usefulness of after-the-fact punitive interventions.¹⁰⁶ These studies have noted that the prevailing response to trafficking relies on the criminal justice system to identify and punish individual bad actors with little attention to poverty alleviation and lacking a “strong commitment to social equity.”¹⁰⁷ The recent report by the UN Special Rapporteur on Extreme Poverty and Human Rights also criticized the penalization of the poor for “deviant” behaviors related to impoverishment.¹⁰⁸ The consensus in the recent human rights scholarship is striking: economic inequality must be addressed as a way to alleviate the conditions that produce all forms of violence.¹⁰⁹

A corpus of health law scholarship has similarly recognized economic hardship and inequality as factors contributing to violent and harmful behavior.¹¹⁰ Chronic conditions of income inequality produce stress and low morale that affect health adversely, often resulting in

Economic, Social, and Cultural Rights: Appraisal of the Link and the Relevance to the Work of the United Nations Committee Against Torture. Nov 2001.

¹⁰⁶ Jonathan Todres, *Widening Our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking*, 33 Mich. J. of Int’l Law 53, 58 (2011); Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 Vanderbilt J. of Transnational Law 1, 3 (2010).

¹⁰⁷ Todres, *Widening Our Lens*, *supra* note 106, at 63, 73.

¹⁰⁸ *Extreme Poverty and Human rights, Report by the Secretary General*, A/66/265, 11, par. 33 Aug. 4, 2011 available at <http://www.ohchr.org/Documents/Issues/Poverty/A.66.265.pdf>.

¹⁰⁹ Frances Stewart, *Policies Towards Horizontal Inequalities in Post Conflict Reconstruction* 6, CRISE Working Paper, Mar. 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 Rev Panam Salud Publica. 382, 392 (2010). See Ann Orford, *The Subject of Globalization: Economics, Identity and Human Rights*, 24 Am. Soc’y Intl. L. Proc. 146, 147 (2000). (arguing that increasing poverty, unemployment and insecurity combine into “a recipe for human rights abuses”).

¹¹⁰ Ariel Kalil, Kathleen M. Ziol-Guest, *Single Mothers' Employment Dynamics and Adolescent Well-Being*, National Poverty Center Working Paper Series, #04-10, June 2004; John W. Lynch, et al., *Income Inequality and Mortality in Metropolitan Areas of the United States*, 88 Am. J. Pub. Health 1074, 1079 (1998).

violence.¹¹¹ Health issues linked to income inequality cannot be resolved by medical intervention alone, but rather require attention to structural matters.¹¹² Public health scholars studying the rates of HIV infection in the United States have established that the biology of transmission and infection is directly linked with socio-economic conditions.¹¹³ They have urged greater attention to this relationship and argue that a redistribution of resources is required as a means to reduce infection rates.¹¹⁴ 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.¹¹⁵

Injury-prevention specialists have similarly attributed 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.¹¹⁶

Family law scholarship, too, has increasingly addressed social tensions in households within the context of class and inequality.¹¹⁷ Family law scholars have demonstrated that family

¹¹¹ Neckerman and Torche, *supra* note 71, 341-343; Morgan Kelly, *Inequality and Crime*, 82 Rev. of Economics and Statistics, 530, 537 (2000).

¹¹² John Lynch, *et al.*, *Is Income Inequality a Determinant of Population Health? Part 1. A Systematic Review*, 82 The Milbank Quarterly 5, 66-69, 82 (2004).

¹¹³ Sally Zierler & Nancy Krieger, *Reframing Women's Risk: Social Inequalities and HIV Infection*, 18 Annu. Rev. Public Health 401, 403 (1997).

¹¹⁴ *Id.* at 425, 429.

¹¹⁵ Alex Scott-Samuel, *et al.*, *Hegemonic Masculinity, Structural Violence And Health Inequalities* 19 Critical Pub. Health 287, 288 (2009).

¹¹⁶ Catherine Cubbin & Gordon S. Smith, *Socioeconomic Inequalities in Injury: Critical Issues in Design and Analysis* 23 Annu. Rev. Public Health 349, 366-370 (2002).

¹¹⁷ 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).

well-being and family dysfunction must be considered within the realm of the political economy.¹¹⁸ They have documented the ways in which household power differentials often replicate market hierarchies, often with deleterious effects on its members.¹¹⁹ 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.¹²⁰ Researchers in the field of child abuse have demonstrated the influence of economic stability on parent-child relationships. Children's law experts are critical of the shift from child welfare to child protection and the attending emphasis on policing "the deviant parent" as a result of the depoliticization of social inequality.¹²¹ Tendencies of punitive responses have permeated child protection systems, now viewed as "adjuncts of the penal apparatus," thereby discouraging families from availing themselves of social services.¹²² Researchers have urged attention to the conditions of socio-economic disadvantage.¹²³

Experts on sexual abuse and incest are reluctant to rely on the criminal justice system, wary of an exploitative and racist system that revealed itself incapable of providing meaningful

¹¹⁸ Eichner, *supra* note 117, at 55-57. See Carbone, *supra* 96, note 53.

¹¹⁹ Rittich, *supra* note 86, 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).

¹²⁰ Carbone, *supra* note 96, at 549, 552, 556 (observing the "two-parent as the province of the elite").

¹²¹ David McConnell, Gwynnyth Llewellyn, *Social Inequality, 'The Deviant Parent' and Child Protection Practice* 40 Australian J. of Soc. Issues 553, 554 (2005).

¹²² See Loïc Wacquant, *Class, Race, and Hyperincarceration in Revanchist America*, Daedalus 74, 84-85 (Summer 2010).

¹²³ *Id.*

intervention.¹²⁴ 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.¹²⁵

The field of social work has also examined deviance from a structural perspective. New critiques challenge the emphasis on individual capacity building so central to the social work concept of empowerment.¹²⁶ Social work scholars have increasingly emphasized the study of social patterns that contribute to crisis rather than the individual consequence of crisis.¹²⁷ As a methodology, researchers examine of hierarchies of power, wealth inequality, and issues of social justice as a means to fulfill their ethical responsibilities in the realm of social work.¹²⁸

The scholarship of domestic violence has fallen behind the current intellectual and theoretical advances that have arrived to a deeper understanding of the complex working of market forces in the daily life of vast numbers of men and women. Domestic violence scholarship has remained largely fixed on theories of patriarchy based on notions of a male-dominated society: arguments that cannot be gainsaid, of course, but also arguments that have tended to neglect the structural conditions from which patriarchy emerged as a cultural

¹²⁴ Sara Kershner, *et al.*, *Toward Transformative Justice: A Liberatory Approach to Child Sexual Abuse and other forms of Intimate and Community Violence*, 20 (2007).

¹²⁵ Gillian Harkins, *Everybody's Family Romance: Reading Incest in Neoliberal America* 5-10 (2009). Kershner, *supra* note 124, at 14-18; *America's Child Death Shame*, BBC News, US & Canada, Oct. 17, 2011, <http://www.bbc.co.uk/news/magazine-15193530>.

¹²⁶ Leonardsen, *supra* note 91, at 4.

¹²⁷ *Id.* at 7.

¹²⁸ Kathy Lay & Lisa McGuire, *Building a Lens for Critical Reflection and Reflexivity in Social Work Education* 29 *Social Work Education* 539, 546 (2010).

arrangement.¹²⁹ Missing too are the explanations of ways that hierarchies of power and authority other than patriarchy contribute to patriarchal structures.

Few indeed are manifestations of social dysfunction in which factors of structural inequality are not relevant. Notable feminist scholars Nancy Fraser and Wendy Brown have urged feminists to revive their relationship with political economic justice: “to integrate the best of recent feminist theorizing with the best of recent critical theorizing about capitalism”¹³⁰ and to “cultivate the memory– and ...ignite that memory – of the utopian imaginary of the revolutionary paradigm.”¹³¹ Inequality in the United States has increased dramatically.¹³² The crisis of the political economics of neoliberalism has reached grave proportions.¹³³ 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 to repeal a local law that criminalized domestic violence as a budget-saving measure.¹³⁴ This well-publicized event suggests the ways

¹²⁹ For a helpful critique of current feminist theories about patriarchy, see Hunnicutt, *supra* note 66, at 553.

¹³⁰ Fraser, *supra* note 45, at 98.

¹³¹ Wendy Brown, *supra* note 45 at 15.

¹³² Stephen B. Cohen, *Inequality and the Deficit* 4, 9, 17, available at SSRN: <http://ssrn.com/abstract=1890645> (2011) (noting a significant reversal of historical trends). Ann 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 (2010) (noting that prior to the economic crisis of 2008, poverty rates in the United States were climbing).

¹³³ Benjamin Kunkel, *How Much Is Too Much?*, 33 LRB 9 (Feb.3, 2011) (described by David Harvey as a “surplus capital and surplus labour existing side by side with seemingly no way to put them back together”).

¹³⁴ 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

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 on those occasions when such strategies are deemed disadvantageous for law enforcement agencies. In the *Town of Castle Rock v. Gonzales* the U.S. Supreme Court ruled that the police were not required to enforce domestic violence restraining orders, notwithstanding a state law that required enforcement. In the realm of domestic violence, criminal law often functions in an arbitrary manner and undermine its very stated purpose.¹³⁵

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 have noted: “[t]he criminal justice system needs more than reform. It requires reimagining.”¹³⁶

This Part offers alternative strategies to address domestic violence in three settings: two are examples of 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 model 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.

arrest and prosecution when such strategies are deemed inexpedient for law enforcement, *see* Weissman, *supra* note 11, at 399.

¹³⁵ 545 U.S. 748 (2005).

¹³⁶ Cecelia Klingele, *et al.*, *Reimagining Criminal Justice*, 2010 Wis. L. Rev. 953 (2010).

A deeper understanding of the relationship between economic strain and domestic violence suggests new criminal justice models to address structural concerns, including unemployment, poverty, and neighborhood infrastructure.¹³⁷ 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.¹³⁸ These models are designed to *prevent* the commission of a criminal act that would otherwise necessitate conventional law enforcement responses.¹³⁹

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.¹⁴⁰ In Brooklyn, New York, the District Attorney’s office has developed expertise in matters beyond prosecutorial trial skills in order to work with communities to mobilize local assets, address housing issues, and reclaim public space.¹⁴¹ Kansas state correctional officials inaugurated the Justice Reinvestment program designed to reduce funding of prisons and reallocate the savings to infrastructure and civic

¹³⁷ Gruber, *supra* note 12, at 655-656 (noting that under different circumstances, criminal justice might be part of a feminist agenda). See Wacquant, *supra* note 122, at 85 (arguing the need for deep and broad reforms). For a review of a progressive analysis of and description of alternative approaches to crime, see generally Center for Community Alternatives, [http:// www.communityalternatives.org](http://www.communityalternatives.org).

¹³⁸ Klingele, *supra* note 136, at 979.

¹³⁹ See Christine J. Sutton, *Crime and Delinquency*, 66 Fed. Probation 61, 61 (2002) (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).

¹⁴⁰ 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).

¹⁴¹ See Redhook Community Justice Center, http://www.brooklynda.org/red%20hook/red_hook.htm. See also Dickey & McGarry, *supra* note 140, at 325, 354-355.

institutions in high-risk neighborhoods.¹⁴² In Wichita, as part of the Justice Reinvestment program, law enforcement officials developed a plan to purchase abandoned property and redevelop housing in blighted neighborhoods.¹⁴³ 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.¹⁴⁴ Addressing the socio-economic factors that contribute to crime must be a fundamental premise to any crime prevention strategy.¹⁴⁵

These measures do not respond directly to crimes of domestic violence, of course, but they do suggest solutions relevant to gender-based violence. They formulate models upon which to base reforms needed within the criminal justice system and 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 the crime and the criminal justice system’s overreliance on punishment.¹⁴⁶ Moreover, they respond to domestic violence scholars who urge police and prosecutors to adopt strategies are responsive to the circumstances of marginalized communities.¹⁴⁷

¹⁴² Judith Greene & Marc Mauer, *Downscaling Prisons: Lessons from Four States*, 53-54 (2010).

¹⁴³ 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>.

¹⁴⁴ *Id.* at 29.

¹⁴⁵ Sharon Pratt Kelly, *Can We Win the Battle for America's Streets?* USA Today Magazine, 01617389, May94, Vol. 122, Issue 2588 May 1994.

¹⁴⁶ Wacquant *supra* note 122, at 85.

¹⁴⁷ Kit Kinports, *Feminist Prosecutors and Patriarchal States*, (November 14, 2011). Criminal Law & Philosophy, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=1959712>. See Barbara Fedders, *supra* note 55 and accompanying text.

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 hyperincarceration—an oversight not without irony for a movement that developed out of the civil rights project.¹⁴⁸ Whether such reforms can influence criminal justice procedures depends entirely on the will of the political leaders as well as the efforts of advocates.¹⁴⁹ Indeed, the call to reform the criminal justice system has been a priority demand for the U.S. civil rights/human rights movement for decades. As Loïc Wacquant has observed, 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.’”¹⁵⁰ Domestic violence advocates would do well to consider how the values associated with the civil rights struggles ought to 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.¹⁵¹ 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.

¹⁴⁸ 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).

¹⁴⁹ See Nicola Lacey, *American Imprisonment in Comparative Perspective*, *Daedalus* 102, 105 (Summer 2010) (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).

¹⁵⁰ Wacquant, *supra* note 122 at 78, 79 (noting “inmates are *first and foremost poor people*”).

¹⁵¹ Marcia G. Shein, *Post-Traumatic Stress Disorder in The Criminal Justice System: From Vietnam To Iraq And Afghanistan* 57 *Federal Lawyer* 42, 50 (2010). Peter Katel, *Caring for Veterans* 20 *CQ Researcher* 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*, *The Economist*, June 4, 2011.

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 or other deployment-related emotional problems.¹⁵² The courts have increased in numbers and currently approximately 80 such programs are in operation nationwide.¹⁵³ These courts have determined that the effect of military service ought to mitigate the consequences for criminal acts and endeavor to provide assistance with a wide range of services.¹⁵⁴ Veterans' courts operate with the premise that military service has relevance to criminal conduct and endeavor to provide assistance with a range of services.¹⁵⁵

Specialized courts are not a new approach. They fall within the tradition of "problem-solving courts" designed to devise alternatives to incarceration strategies.¹⁵⁶ They often share a common desire to improve outcomes and reduce court inefficiencies.¹⁵⁷ Indeed, "specialized" domestic violence courts 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.¹⁵⁸ Domestic violence courts are associated with efficient case management and a focus on

¹⁵² Goode, *supra* note 151.

¹⁵³ *Veterans Court: Incredible Success Rate*, Feb. 10, 2012, available at <http://jacksonville.com/opinion/editorials/2012-02-10/story/veterans-court-incredible-success-rate>.

¹⁵⁴ John Schwartz, *Defendants Fresh From War Find Service Courts in Court*, N.Y. Times, Mar. 16, 2009, at A14.

¹⁵⁵ *Id.*

¹⁵⁶ Chrysanthi S. Leon, *Should Courts Solve Problems? Connecting Theory and Practice*, 43 No. 6 Crim. Law Bulletin ART 2 (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*, 2 UCLA J.L. & Tech 1 (2002). Most of these courts have had mixed, if best 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 alternative to incarceration programs because they function in the shadow of the carceral state).

¹⁵⁷ Leon, *supra* note 156, at 100.

¹⁵⁸ *See* Elizabeth L. MacDowell, *When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism*, 20 Tex. J. Women & Law 95, 97 (2011).

enhancing prosecutorial functions.¹⁵⁹ Indeed, court bureaucracies and victims of domestic violence are the primary beneficiaries of these specialized courts.¹⁶⁰

Veterans' courts represent in intent and outcome a paradigmatic shift, for they lend credence to the proposition that criminal behavior often has its origins in structural conditions beyond the scope of individual volition.¹⁶¹ These courts "focus on the offender rather than the crime" and seek "to understand and address the causes of the criminal behavior."¹⁶² 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 where 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.¹⁶³

¹⁵⁹ Allison Cleveland, *Specialization Has the Potential to Lead to Uneven Justice: Domestic Violence Cases in the Juvenile & Domestic Violence Courts*, 6 Mod Am. 17, 18 (2010) (noting that at least in one jurisdiction, domestic violence courts were harder on perpetrators than other courts).

¹⁶⁰ *Id.* at 18 (recounting concerns that "judicial education about family abuse and extended tenure on a calendar devoted to such cases creates a pro-victim, antidefense bias"). See also Anat Maytal, *Specialized Domestic Violence Courts: Are They worth the Trouble in Massachusetts?*, 18 B.U. Pub. Int. L.J. 197, 226 (2008). See generally MacDowell, *supra* note 158 (analyzing the benefits and drawbacks that these courts present to victims of domestic violence).

¹⁶¹ Shein, *supra* note 151, 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 (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. Lynne Marek, *Courts For Veterans Spreading Across U.S. Wave Of Vets In Courts Trips Alarm*, 31 The National Law Journal 1, (2008) (noting necessity of addressing the underlying issues of criminal behavior).

¹⁶² Hon. Wendy S. Lindley, *The Promise of Veterans Court* 51 Nov. Orange Co. Lawyer 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 154 (reporting sympathetic comments by one federal district court judge toward veterans in criminal court and showing leniency).

¹⁶³ See Morrill, *et al.*, *supra* note 100, at 297 (describing a particular type of sociological inquiry to the study of crime).

Increasing numbers of law enforcement experts and criminal justice officials support veterans' courts as a far more usable alternative to traditional criminal justice strategies.¹⁶⁴ These authorities have recognized that social forces often contribute to criminal behavior.¹⁶⁵ In a statement before the House of Representative 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."¹⁶⁶ These views have often prevailed even where the defendant has committed serious offenses.¹⁶⁷ Indeed, the U.S. Supreme Court has 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 Supreme Court acknowledged the legal relevance of stress and emotional trauma caused by conditions of combat over which the defendant had no control.¹⁶⁸

The decision in *Porter* suggests a sympathetic willingness to consider the consequences of combat and the difficulties faced in re-adjusting to civilian life as factors relevant to criminal

¹⁶⁴ Goode, *supra* note 151.

¹⁶⁵ *Id* (noting that law enforcement officials agree that "the society that trained them and sent them into harm's way... bears some responsibility).

¹⁶⁶ Statement of Patrick W. Welch, PhD Director Veterans Service Agency Erie County, New York Before the House of Representatives Committee on Veterans Affairs On the value of establishing Veterans Courts - Sept. 16, 2009, available at <http://www.erie.gov/veterans/pdfs/PWWtestimonyHouse091609.pdf>. Cf. Marti Macquire, *Raleigh Officer Shapes How Police Deal With Mentally Ill*, The Raleigh News & Observer, Nov. 20, 2011, (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) available at <http://www.newsobserver.com/2011/11/20/1657519/raleigh-officer-shapes-how-police.html>.

¹⁶⁷ Joshua Zuber, *Veteran's Court Program Expanded*, Feb. 13, 2012 (noting that the veterans' court in El Paso recently expanded from misdemeanors to felonies) available at <http://www.kfoxtv.com/news/news/veterans-court-program-expanded/nHb46/>; Goode, *supra* note 151 (noting that defendant had shot at police); Robert Boczkiewicz, *Veteran of Afghanistan, Iraq Gets Probation*, The Pueblo Chieftain, Dec. 19, 2009 (describing defendant who had committed acts of bribery with inmates and family members at a high security U.S. prison).

¹⁶⁸ 130 S. Ct. 447, 2009.

liability.¹⁶⁹ 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.¹⁷⁰ Many veterans who suffer post-traumatic stress often do not seek mental health care.¹⁷¹ These symptoms, and the failure to obtain treatment, help explain why veterans commit a statistically significant number of crimes, including rape and assault.¹⁷²

Veterans are deemed more worthy of public sympathy than the un- and underemployed who commit acts of domestic violence, thus 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.¹⁷³ Displaced workers often experience a sense of alienation and disenfranchisement; suicide and attempted suicide rates increase, as do incidents of crime and homicide rates.¹⁷⁴ All in all, the very factors that contribute to acts of domestic violence.

¹⁶⁹ Lithwick, *supra* note 161. Katel, *supra* note 151.

¹⁷⁰ The Economist, *supra* note 151 (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>. Robert Boczkiewicz, *Veteran of Afghanistan, Iraq Gets Probation*, The Pueblo Chieftain, Dec. 19, 2009.

¹⁷¹ Lithwick, *supra* note 161.

¹⁷² *Id.* (reporting figures from the Department of Veterans Affairs that veterans account for 10 percent of those with criminal records).

¹⁷³ See Weissman, *supra* note 11, at 418.

¹⁷⁴ *Id.* at 419-420.

Veteran courts offer a promising way to address structural circumstances of violence within the criminal justice system. These courts provide a successful model to consider the ways in which broader socio-psychological concerns contribute to criminal behaviors, and indeed suggest ways for the criminal justice system to consider the context of crime as condition of remedy.¹⁷⁵ 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.”¹⁷⁶

The point here is not that these courts serve merely as forums to aid perpetrators with exculpatory strategies. But it is also true 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.¹⁷⁷ 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.¹⁷⁸

¹⁷⁵ See Dickey & McGarry, *supra* note 140, at 338 (suggesting that justice requires this).

¹⁷⁶ Wacquant, *supra* note 122, at 85, 85 n 56 (noting that studies have demonstrated that rehabilitation is more effective than retribution in changing the behaviors of criminals).

¹⁷⁷ Martha Neil, *Special Courts to Help Veterans Are a Growing Trend Nationwide*, ABA Journal, Nov. 10, 2011 available at http://www.abajournal.com/news/article/special_courts_to_help_veterans_are_a_growing_trend_nationwide/; Katel, *supra* note 151 (describing the newly created Veterans’ Justice Outreach Initiative).

¹⁷⁸ Garland, *supra* note 7, at 199.

Certainly, caution is warranted when promoting any type of problem-solving court and the diversionary programs they foster.¹⁷⁹ Such reforms often contribute to a net-widening phenomenon whereby the supervision and surveillance associated with special courts have increased technical violations that result in over-criminalization and even greater punishment of those defendants who do not complete their alternative treatment programs.¹⁸⁰ It further bears emphasis that veterans' courts are not designed to serve as strategies to aid perpetrators in judicial proceedings at which they are defense attorneys a setting where courts are "authorized" to explore the social factors of crime, however, veterans' courts offer the possibility of meaningful reform. They may help to foster a consensus about the possibilities of 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.¹⁸¹

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.¹⁸² It acknowledges the role of the

¹⁷⁹ Weissman, *supra* note 156, at 245- 246.

¹⁸⁰ *Id.*

¹⁸¹ See Zuber, *supra* note 167 .

¹⁸² Angela P. Harris, *Beyond The Monster Factory: Gender Violence, Race, And The Liberatory Potential Of Restorative Justice*, 25 Berkeley J. Gender L. & Just. 199, 211-213 (2010).

state, communities, and families in creating systems of power and subordination particularly in regard to gender-based violence.¹⁸³ 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.¹⁸⁴

Harris introduces her readers to Generation Five, 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.”¹⁸⁵ 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.¹⁸⁶

Scholars who study criminal justice institutions have recognized that the system “is long due for an overhaul.”¹⁸⁷ The above models differ from the prevailing 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

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 221, 224.

¹⁸⁵ *Id.* at 212. See Generation Five, Transformative Justice, <http://www.generationfive.org/tj.php>. Generation Five characterizing sexual abuse as a social and political issue. Kershner, *supra* note 124, at 67.

¹⁸⁶ Kershner, *supra* note 124, at 5. The organization is also committed to protecting the rights of the accused, whether rightfully or wrongfully accused. *Id.* at 20.

¹⁸⁷ Roger A. Fairfax, Jr. *From “Overcriminalization” to “Smart on Crime”: American Criminal Justice Reform—Legacy and Prospects*, 7 J. L. Econ. & Pol’y 597 (2011).

informal settings.¹⁸⁸ They counteract institutional proclivities to over-criminalize and over-incarcerate, and mitigate the cumulative effects of inequality widely experienced in the criminal justice system.¹⁸⁹

B. Domestic Violence Law and the Political Economy

However re-organized and re-imagined, 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, categories that are relegated to the lowest level of judicial review. Scholars and advocates, discouraged by the difficulty in pressing successful legal claims to address the practices of private capital, have tended to abandon efforts to focus on class issues within the law.¹⁹⁰ 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 certainly far more nuanced remedies to domestic violence than the existing template of “punishment-as-deterrence” that has failed to

¹⁸⁸ 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 U.C.L.A. L. Rev. 1727, 1743 (1999).

¹⁸⁹ Bruce Western & Becky Pettit, *Incarceration & Social Inequality*, Daedalus 8, 12 (Summer 2010) (observing that carceral inequalities affect not only those incarcerated by their families and children).

¹⁹⁰ 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).

reduce gender-based violence.¹⁹¹ 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.¹⁹² City planning and community development strategies also possess legal tools worth considering. Richard Schragger has described three strategies designed to constrain and redistribute capital at the local level: placing conditions on development subsidies through contracts, including community benefit agreements (CBAs); labor friendly legislation such as minimum wage ordinances; and efforts to exclude capital deemed harmful to communities, such as anti-big box campaigns.¹⁹³

Of these strategies, CBAs offer a promising way to address structural concerns and at the same time attend to issues pertaining to domestic violence. CBAs are generally private enforceable contracts negotiated between a prospective developer and community coalitions that include conditions relating to social justice issues.¹⁹⁴ These agreements also involve the relevant governmental entity which ultimately approves the development proposal.¹⁹⁵ The impetus for

¹⁹¹ See Weissman, *supra* note 11, at 439-442 for a discussion of 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. See 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).

¹⁹² *Kelo v. City of New London*, 545 U.S. 469 (2005); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006).

¹⁹³ Richard C. Schragger, *Mobile Capital, Local Economic Regulation, And The Democratic City*, 123 Harv. L. Rev. 482, 508-513 (2009).

¹⁹⁴ 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 Urban Lawyer 657, 658 (2007); Patricia Salkin & Amy Lavine, *Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements*, 17 J. Affordable Hous. & Cmty. Dev. L. 113, 114 (2007) (noting that the negotiation may also include local government officials).

¹⁹⁵ Cummings (noting the way in which governmental regulations are implicated in CBAs).

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.¹⁹⁶

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.”¹⁹⁷ They address a broad array of socio-economic conditions and often bring together diverse community groups.¹⁹⁸ Thus, as instruments of social justice, CBAs have direct and practical relevance to the movement to end domestic violence movement.

CBAs work through a negotiation process that begins with the coalition members themselves. David Marcello has described “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.¹⁹⁹ These processes provide the opportunity for domestic violence advocates to demonstrate the relationship between economic development issues and domestic violence.²⁰⁰ 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

¹⁹⁶ Marcello, *supra* note 194, at 659.

¹⁹⁷ Julian Gross, *Community Benefits Agreements: Definitions, Values, and Legal Enforceability* 17 J. of Affordable Housing & Community Development Law 35, 40 (2007); Marcello, *supra* note 194, at 662.

¹⁹⁸ See Susan L. Giles & Edward J. Blakely, *Fundamental 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). See Madeline Janis-Aparicio & Roxana Tynan, *Power in Numbers: Community Benefits Agreements and the Power of Coalition Building*, 144 Shelterforce Online, Issue #144 (2005) available at <http://www.nhi.org/online/issues/144/powerinnumbers.html>.

¹⁹⁹ Marcello, *supra* note 194, at 663-664.

²⁰⁰ See *supra* notes 71-83 and accompanying text.

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: that is, services that address structural concerns relevant to both perpetrator and victim.²⁰¹ 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.²⁰² CBAs enable social justice coalitions to leverage bargaining power in economic development processes and affect structural economic conditions.²⁰³ 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.²⁰⁴ CBAs thus are a democratizing force in government

²⁰¹ Salkin & Levine, *supra* note 194, at 114; Schragger, *supra* note 193, at 509.

²⁰² Marcello, *supra* note 194, at 660-661.

²⁰³ See William Ho, *Community Benefits Agreements: An Evolution in Public Benefits Negotiation Processes*, 17 J. Affordable Housing & Community Dev. L. 7, 11-19 (2007/2008). CBAs between community groups and developers are more likely to survive legal challenge than conditions imposed by government exactions. See *Community Benefits Agreements*, 41-JUL Real Est. L. Rep 3 (2011). For a fuller discussion of the legal issues that arise with CBAs see Salkin & Lavine, *supra* note 194; 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. Rev. 1153, 1205 (2011).

²⁰⁴ Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor* 17 J. Affordable Housing & Community Dev. L. 59, 72 (Fall 2007/Winter 2008).

decision-making processes, monitoring, and enforcement.²⁰⁵ Domestic violence advocates who are party to these agreements help to constrain local governments who can no longer bypass community groups in 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: expand domestic violence advocacy into broader social justice networks, obtain support from coalition members to include contract conditions calling for specific resources to prevent and ameliorate the consequences of domestic violence, and address structural economic concerns. Such a strategy could also contribute to the untethering of solutions to gender-based violence tied to a failed criminal justice system.

IV. Conclusion

This article has addressed the complexities of domestic violence with attention to expanding both 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 the objectives of socio-economic justice. Rather, these arguments posit that 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, of course. 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

²⁰⁵ *Id.* Marcello, *supra* note 194, at 665 (noting that CBAs “restore democratizing legitimacy by affording community groups a voice”).

gender violence but rather 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 demanding 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 socio-economic circumstances are likely to be ineffective. This viewpoint has been articulated by scholars who study related human rights violations and egregious suffering. In the context of torture, the World Organization Against Torture:

Sustainable 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.²⁰⁶

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 psychosocial orientations which are associated with poor health outcomes from their SES 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 (*citations omitted*).²⁰⁷

Domestic violence scholars and advocates should join theorists and activists to develop political economic approaches to social harms. Compelling social and economic changes often

²⁰⁶ Alan Wood, *Correlating Socio-Economic Inequality and Violence* 33 in *Attacking the Root Causes of Torture, Poverty, Inequality and Violence, An Interdisciplinary Study* 33, (Thomas E. McCarthy, ed. World Organization Against Torture (OMCT) 2006).

²⁰⁷ 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. Science & Medicine 809, 817 (1997).

act to change behaviors, and often act to change behaviors 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.²⁰⁸ Indeed, addressing the structural determinants of domestic violence will not only improve outcomes for victims of such crime, but will enhance theories of justice generally to the benefit of the larger goals of social justice.²⁰⁹

²⁰⁸ See Julie Goldscheid, *Advancing Equality In Domestic Violence Law Reform* 11 Am. U. J. Gender Soc. Pol’y & L. 417, 424 (2003) (calling for a “reinvigorate[ion] [of] the important feminist tenet that law reform initiatives should be propelled by the needs of the women we represent”).

²⁰⁹ Waldron *supra* note 10, at 22 (suggesting that socioeconomic rights are best developed within the context of theories of justice).