A Home With Dignity: DOmestic Violence and Property Rights

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A HOME WITH DIGNITY: DOMESTIC VIOLENCE AND PROPERTY RIGHTS

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Abstract

This Article argues that the legal system should do more to address intimate partner violence and each party’s need for a home for several reasons. First, domestic violence is a leading cause of homelessness and family homelessness. Second, the struggle over rights to a shared home can increase the violence to which the woman is subjected. And third, a woman who decides that continuing to share a home with the person who abused her receives little or no system support, despite the evidence that this decision could most effectively reduce the violence. The legal system’s current failings result from its limited goals – achieving a narrow concept of short-term safety premised on physical separation in the home. This Article argues for creating a comprehensive theory that addresses the rights to a home when there is domestic violence by focusing on each party’s dignity, the importance of home and ending domestic violence, as opposed to merely “safety.”

There are several laws that address the home when there is domestic violence. The civil protection order (CPO) laws are the most prevalent; they exist in all fifty states and Washington, D.C. While most offer a vacate remedy to exclude the perpetrator of abuse from the shared home, they do so with varying effectiveness and petitioner success rates. Also, very few provide any economic support to maintain the home or find a new home if respondent is not excluded. And all 51 jurisdictions provide very few options to support a woman’s choice to stay in the shared home with her abuser, despite her decision that it would best end the domestic violence.

At the same time, the CPO vacate provisions clash with property law in problematic ways for the respondents. Thirty-four jurisdictions permit vacating a perpetrator from his home, despite being the sole owner of the property. And there is a trend of making these once-temporary vacate orders permanent. This clash can make the legal system seem unfair to perpetrators, which can lower their rate of compliance with the CPO. As a result, perpetrators may increase their violence against women subjected to abuse.

This Article proposes a renewed anti-domestic violence movement that is focused on the dignity of and greater home access for both parties. Such a movement could focus on expanding existing laws that would both promote dignity and ending domestic violence while ensuring greater home access. For instance, one proposal is for more thorough court fact finding in making the vacate order that includes the abuse as well as each party’s risk of potential homelessness and the extent of their personhood interests.
in the home. Another proposal is to increase the number of home options for the parties by creating shelters for men who are abusive, more jurisdictions that require alternative housing through a CPO and increased funding for low-barrier battered women shelters and transitional housing.
INTRODUCTION

I. THE GOALS OF ENDING DOMESTIC VIOLENCE, SUPPORTING DIGNITY, AND AFFIRMING THE IMPORTANCE OF HOME
   A. Ending Domestic Violence
   B. Supporting Dignity
   C. Affirming the Importance of Home
      1. Home and Domestic Violence
      2. Dignity, Home and Property
   D. Ending Domestic Violence, Supporting Dignity, and Affirming the Importance of Home

II. CURRENT LEGAL SYSTEM
   A. Three Categories of Laws
   B. Petitioner Chooses to Stay in Home and Exclude Respondent
      1. CPO Vacate Provision, Eviction Defense, and Lock Change Laws
      2. Benefits for Achieving Goals
      3. Shortcomings for Achieving Goals
   C. Petitioner Chooses to Leave Home and Respondent Stays in Home
      1. CPO Alternative Housing Provision, Early Lease Termination, Anti-Discrimination, and Shelter and Transitional Housing Funding Laws
      2. Benefits for Achieving Goals
      3. Shortcomings for Achieving Goals
   D. Petitioner Chooses to End Violence and Stay with Respondent in Home
      1. CPO No Further Abuse Provision
      2. Benefits for Achieving Goals
      3. Shortcomings for Achieving Goals

III. PROPOSAL: A HOME WITH DIGNITY WHEN THERE IS DOMESTIC VIOLENCE
   A. Current Obstacles
   B. Feminist Domestic Violence Movement Should Focus More on Dignity and Greater Home Access
   C. Using the Domestic Violence Movement Focused More on Dignity to Create Legal Change
1. Expand Criteria for Home Possession Based on Goals of Ending Domestic Violence, Supporting Dignity, and Affirming the Importance of Home
2. Increase the Number of Home Options Based on Goals of Ending Domestic Violence, Supporting Dignity, and Affirming the Importance of Home

CONCLUSION
Judge Bruce S. Lamdin ordered Gordan Bisnath not to abuse, threaten or harass [Parbadee Ann Bisnath, Mr. Bisnath’s ex-wife with whom he still shared a home]. . . [Judge Lamdin] directed the 48-year-old to complete an abuser intervention program. But when it came time to address the victim’s request that her abuser not be permitted to contact her or return to their home . . . the judge declined. “Where is he going to live?” Lamdin asked . . . .

“He’s making the home unsafe for her, so he’s the one who should have consequences . . . That she and the children should be homeless because he’s breaking the law makes no sense.”

“When it comes down to a protective order. Who owns the property has little or nothing to do with anything.”

INTRODUCTION

This Article examines intimate partner violence and determines that the legal system does not appropriately address all of the issues that are critical to supporting each party’s need for a home. As a result of this problem, and as demonstrated by the Bisnath case set forth above, domestic violence can increase, the parties can become homeless, and our legal system does not do what it can to support and maintain each person’s


2. Id.


4. I will discuss women subjected to abuse by men throughout the paper even though there is clear evidence that women can abuse men and abuse occurs in same-sex relationships as well. I have made the choice to focus on women subjected to abuse by men because I am focused on the most prevalent form of domestic violence, coercive controlling terrorism by an intimate partner, which involves the operation of power and control through the use of various forms of abuse. Joan B. Kelly & Michael P. Johnson, Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions, 46 Fam. Ct. Rev. 476, 481-82 (2008). I also make this decision based on the research that shows women subjected to male-perpetrated domestic violence are by far the largest majority of domestic violence victims. See Kelly & Johnson, supra, at 481-82; Nat’l Coalition Against Domestic Violence, DOMESTIC VIOLENCE FACTS, available at http://www.ncadv.org/files/DomesticViolenceFactSheet%28National%29.pdf (85% of persons subjected to abuse are women). See also Margaret E. Johnson, Redefining Harm, Reimagining Remedies and Reclaiming Domestic Violence Law, 42 U.C. Davis L. Rev. 1107, 1110 n.4 (2009). I make this decision with concern of perpetuating stereotypes based on gender or domestic violence. See generally Leigh Goodman, Transgender People, Intimate Partner Abuse and the Legal System, 48 Harv. C.R.-C.L. L. Rev. ___ (2012) (forthcoming).
dignity. This problem results from the legal system’s limited goals – achieving a narrow concept of safety premised on physical separation in the home. This Article argues for creating a comprehensive theory that addresses the rights to a home when there is domestic violence by focusing on each party’s dignity, the importance of home and ending domestic violence, as opposed to “safety.” To explore this new theory, this Article discusses three scenarios that a woman subjected to abuse might choose when she shares the home with her partner who has abused her. First, she might choose to separate from her partner by excluding him from the shared home while she stays in it. Second, she might choose to separate from him by leaving the shared home and allow him to stay in it. Third, she might choose not to separate, but rather to continue the relationship and stay in the shared home.

Currently, the laws addressing the home when there is domestic violence do not adequately address the following questions: What goals should govern any dispute relating to a shared home or the provision of a new home when there is domestic violence? How should the courts decide who should stay in the shared home? What conditions should govern that party’s period of possession and the other party’s exclusion? How can the domestic violence system reconcile its laws with property law? If not permitted to stay or not interested in staying in the shared home, can there be another home for one of the parties? What conditions should govern the identification, move to and maintenance of the new home? How can the domestic violence movement work towards greater access to the creation of a system where there are homes without domestic violence?

There are several laws that address the home when there is domestic violence. The civil protection order (CPO) laws are the most prevalent; they exist in all fifty states and Washington, D.C. Although these laws vary, in general, they are short-term, and focus primarily on injunctive relief designed to address violent crimes committed by a person in particular forms of relationship with another. The available relief often includes a provision that enjoins future violence by the abuser, the respondent in the action; an order for respondent to stay away from the person subjected to abuse, the petitioner in the action; and an order that the respondent not contact the petitioner. Other relief may include counseling, child custody, child support and excluding respondent from the shared home, often called a “vacate” order.

CPO vacate provisions vary greatly. For those subjected to abuse, CPO laws could do more to ensure they have a home and all the benefits that come from having a home. For instance, only some states provide remedies that support the petitioner in maintaining her home or obtaining a new home, such as ordering respondent to contribute to rent, mortgage and/or
household expenses or to provide an alternative home. Such provisions are not available in every jurisdiction and their remedies are not very comprehensive. In addition, the 51 jurisdictions provide very few options to support a woman’s choice to stay in the shared home with her abuser, despite her decision that it would best end the domestic violence. Research shows that when courts permit women to exert their agency, they are best able to address the domestic violence.\footnote{Johnson, supra note 4, at 1148 (citing Angela Moe Wan, Battered Women in the Restraining Order Process: Observations in a Court Advocacy Program, 6 VIOLENCE AGAINST WOMEN 606, 615 (2000)).}

At the same time, the CPO vacate provisions clash with property law in problematic ways for the respondents. Thirty four jurisdictions let him be vacated from his home, despite being the sole owner of the property. And there is a trend of making these once-temporary vacate orders permanent, as seen currently in New Jersey.\footnote{N.J. STAT. §2C:25-29 (2012).} This clash can make the legal system seem unfair to respondents, which can lower their rate of compliance with the CPO. As a result, respondents may increase their violence against petitioners.\footnote{Deborah Epstein, Procedural Justice: Tempering the State’s Response to Domestic Violence, 43 WM. & MARY L. REV. 1843, 1846 (2002).}

The issue of the home in domestic violence law needs greater attention placed for several reasons. First, domestic violence is a leading cause of homelessness and family homelessness. Second, the struggle over rights to a shared home can increase the violence to which the woman is subjected. And third, a woman who decides that continuing to share a home with the person who abused her receives little or no system support, despite the evidence that this decision could most effectively reduce the violence.

This Article follows in three parts. Part I will analyze the goals that should guide our legal system when there is domestic violence and the parties share a home: ending domestic violence, supporting each party’s dignity, and affirming the importance of home. Part II analyzes the current legal landscape of laws that governs the home when domestic violence occurs and examines its benefits and shortcomings. Part III presents a proposed way forward: expanding domestic violence advocates’ focus to include dignity as an advocacy strategy for new or expanded laws identifying or creating homes for persons experiencing or perpetrating domestic violence.
I. THE GOALS OF ENDING DOMESTIC VIOLENCE,
SUPPORTING DIGNITY, AND AFFIRMING THE IMPORTANCE OF
HOME

A. Ending Domestic Violence

The first goal for the legal system addressing the shared home should be
to actually end domestic violence. The National Coalition Against
Domestic Violence reports that one in every four women will experience
domestic violence in her lifetime.8 An estimated 1.3 million women are
victims of physical assault by an intimate partner each year.9 The exercise
of power and control is central to domestic violence.10 That power and
control may be exercised, in many ways, including physical violence,
emotional abuse, or isolation.11 Researchers have identified that effective
responses to domestic violence include those that support or restore a
victim’s right to “freedom, choice and autonomy.”12 Options that women
can choose and control can promote women’s agency and help decrease
the risk of re-assault.13 Therefore, legal interventions like the civil protection
order laws, that permit persons subjected to abuse to control their legal
remedy by choosing how best to address the abuse, can have a positive
impact on reducing domestic violence.14 Similarly, the ability to stay at a
domestic violence shelter can positively affect women’s psychological
health as well as decrease violence.15

Recently, the domestic violence justice system has focused less on the
agency of women subjected to abuse and generating multiple options for
them to address domestic violence and more on options increasing the
criminal justice system responses and a narrow conception of safety.16 The

8 NAT’L COALITION AGAINST DOMESTIC VIOLENCE, supra note 4.
9 CYRS. FOR DISEASE CONTROL & PREVENTION, NAT’L CYRS. FOR INJURY PREVENTION & CONTROL. COSTS
OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES (2003), available at
10 Johnson, supra note 4, at 1126 (citing Sarah M. Buel, Access to Meaningful Remedy: Overcoming
Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders, 83 OR. L. REV. 945, 958 (2004);
Mary Ann Dutton & Lisa A. Goodman, Coercion in Intimate Partner Violence: Toward a New Conceptualization,
52 SEX ROLES 743 (2005)).
11 Id. at 1115-1124.
12 Id. at 1151 (citing Tamara L. Kuennen, Analyzing the Impact of Coercion on Domestic Violence Victims:
How Much Is Too Much?, 22 BERKELEY J. GENDER L. & JUST. 2, 30 (2007)).
13 Id.
14 Janice Grau et al., Restraining Orders for Battered Women: Issues of Access and Efficacy, 4 WOMEN &
POL., 13, 19, 21-25 (1984); Julia Henderson Gist et al., Protection Orders and Assault Charges: Do Justice
Interventions Reduce Violence Against Women?, 15 AM. J. Fam. L. 59, 67 (2001); Johnson, supra note 4, at 1128;
Carol E. Jordan, Intimate Partner Violence and the Justice System, 19 J. INTERPERS. VIOLENCE 1412, 1425
(2004); Judith McFarlane et al., Protection Orders and Intimate Partner Violence: An 18 Month Study of 150
15 NAT’L RESEARCH COUNCIL, UNDERSTANDING VIOLENCE AGAINST WOMEN 104-07 (Nancy A. Crowell &
16 LEIGH GOODMAN, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM (2012);
Jane K. Stoever, Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil
legal system has focused on support once a person subjected to abuse is in a no-abuse relationship or has left that relationship, but only for a limited time. As scholars have noted there is “[v]irtually no attention paid to a survivor’s need to develop a support network beyond that available from short-term, system based advocacy.” While separation of the two parties has been the main focus of achieving safety in the short-term – through mandatory arrests, no drop prosecutions, stay away and no vacate orders in civil protection orders, and the funding of shelters – the long-term approach to ending domestic violence and maintaining the end of domestic violence is less developed.

Moreover, the separation-as-safety focus has resulted in the isolation of women. Women subjected to abuse who move to shelters or alternative homes in an effort to be physically separated from their abusive partners end up separated from their communities, support networks, neighborhoods, employment, and children’s schools. Few system provisions exist to support the woman who wishes to maintain her connection to her community. And connection to community is “vital to virtually all victims’ physical safety . . . and psychological recovery.” Accordingly, ending domestic violence in the long term, not just the short term, should be a goal of the legal system.

B. Supporting Dignity

In addition to ending domestic violence, dignity should be a goal for the legal system and how it addresses the two parties in an abusive relationship who share a home. Here, I borrow the definition of “dignity” used in philosophy, political philosophy and constitutional law. Dignity is the inherent nature that renders human beings capable of autonomous action and thought. Dignity recognizes human beings as separate from the state in determining fundamental questions affecting the meaning of their lives. John Stuart Mill explained that dignity exists in human beings simply because they have the capacity to “explore the unknown and share their discoveries.” Similar to the Millian conception is the United Nations Universal Declaration of Human Rights and its preamble, which provide a “recognition of the inherent dignity and of the equal and inalienable rights
of all members of the human family.”22 In U.S. Constitutional Law, the Supreme Court often discusses human dignity as related to personal autonomy or “the inviolability of persons from intrusions by the state.”23 The concept of human dignity often is equated with each individual’s inherent worth.24 And the Court often discusses dignity as essential to equality.25 In U.S. political culture, Ronald Dworkin explains that there “is a belief in individual human dignity: that people have the moral right--and the moral responsibility--to confront for themselves, answering to their own conscience and conviction, the most fundamental questions touching the meaning and value of their own lives.”26

Human dignity thus requires decision making capacity, and provides opportunities for decision making, but exists in humans regardless of how they exercise this capacity.27 Martha Nussbaum argues we should ground dignity, and measure our political and societal respect for dignity, not only in support of rationality but also of such capabilities as life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one’s environment.28 In considering how dignity relates to intimate partner violence almost all of these areas of capabilities emerge.

As discussed earlier, the legal system has robustly addressed ways for a woman subjected to abuse to separate from her abuser when they share a home. And these laws are critical both for women who want to stay in the home but leave the relationship, and for women who want to leave the home and the relationship. They address areas of capabilities such as bodily health and integrity, emotions, practical reason, affiliation and control over one’s environment. But they are not comprehensive enough in addressing these capabilities. There are virtually no laws that support a decision to stay in the relationship and the home but end the violence. And the legal system has not properly addressed the dignity of persons who abuse their intimate partners, despite evidence that such consideration could decrease the violence. This paper argues for dignity to be a guiding value for a more

28 Martha Nussbaum, Human Dignity and Political Entitlements in HUMAN DIGNITY AND BIOETHICS: ESSAYS COMMISSIONED BY THE PRESIDENT’S COUNCIL ON BIOETHICS (2008)
comprehensive legal system that addresses the home in domestic violence situations.

C. Affirming the Importance of Home

The third goal for the domestic violence legal system is affirming the importance of “home.” Both property scholarship and domestic violence scholarship show the importance of home to a person’s dignity.29

1. Home and Domestic Violence

There is a tight relationship between home and domestic violence. Historically, the home was “the castle” where the male head of household could govern the inhabitants as he saw fit.30 The common law castle doctrine states that “in his home, a man may forcefully defend himself, his family, and his property against harm by others.”31 This doctrine resulted in self-governance of the home separate from the state. As a result, if the head of the household inflicted physical or other forms of abuse in the home on his wife or children, the state was unwilling to step in and enforce criminal laws.32 For many years, there was a sense that the home is, or should be, an inviolable place even if violence was being perpetrated by one family member against another.33

Recognizing the connection between home and domestic violence, the early Battered Women’s Movement attempted to provide emergency, temporary homes by creating a network of private shelters for women subjected to abuse to flee from the home and to create a new temporary home.34 In addition, mandatory criminal laws of arrest and prosecution

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31 Id. (explaining that in property and criminal law, the “castle doctrine” has long regulated permissible behavior in response to home intrusion).
32 Fox, supra note 29, at 437.
33 Such a sense was reinforced by Lawrence v. Texas, where the Supreme Court found criminal sodomy laws unconstitutional because people have a liberty interest in developing intimate relationships in the privacy of their home. Lawrence v. Texas, 539 U.S. 558 (2003). See also SUK, supra note 30, at 128-131. For further discussion of Lawrence v. Texas and its support for dignity, see Johnson, supra note 20, at 550.
34 In Washington, D.C., a shelter stay lasts for twenty to thirty days. SUPERIOR CT. OF THE DIST. OF COLUM., CRIME VICTIMS COMPENSATION PROGRAM, available at http://www.dccourts.gov/internet/documents/CVCP_Brochure.pdf. This information is also based on my clinic
were created and gave the state mandates to interfere in the home and also separate the abuser through jailing or criminal stay away orders. And the Battered Women’s Movement created civil protection order laws that permitted persons subjected to abuse to temporarily vacate the abuser from the shared home. All of these interventions had the goal of immediate separation in the crisis and through separation to reduce the violence in the short term.

Despite the network of shelters and the vacate laws, there is a strong connection between domestic violence and homelessness. The National Law Center on Homelessness and Poverty reports that domestic violence is a leading cause of homelessness nationally. In one study in Massachusetts, it was found that 92% of homeless women were survivors of physical or sexual assault at some point in their lives. These statistics help us understand that short-term, crisis solutions for staying in the home or establishing a new home need to be matched with long-term solutions to help maintain the home and an abuse-free life. In addition, the short-term solutions also need to expand in quantity and flexibility to accommodate more persons subjected to abuse.

2. Dignity, Home and Property

There is a strong connection between home and dignity. The connection begins with the historical relationship between dignity and property as seen in the legal institutions of slavery and coverture. Society’s lack of respect for the dignity of African Americans and Native Americans is demonstrated by the enacted slavery laws, transforming human beings into property until passage of the U.S. Constitution’s Thirteenth Amendment. Similarly, the society’s lack of respect for married women’s dignity was demonstrated with the institution of coverture. Prior to the

students’ experiences in representing clients seeking civil protection orders and crisis shelter.


36 PETER FINN & SARA COLSON, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT (March 1990); See infra Part II.


38 Id.

39 See Pamela D. Bridgewater, Un/re/dis Covering Slave Breeding in Thirteenth Amendment Jurisprudence, 7 Wash. & Lee Race & Ethnic Anc. L.J. 11, 13 (2001) (analyzing slave breeding); Cheryl I. Harris, Finding Sojourner’s Truth: Race, Gender, and the Institution of Property, 18 Cardozo L. Rev. 309, 313 (1996) (“The archetypes of the slave . . . were ideologies of womanhood that functioned not to simply describe reality, but to represent social relations in a way that legitimated and normalized racial and sexual domination.”)

mid-19th Century, although women could hold title to the property, only her husband could exercise ownership rights like transfer rights over the home. If the property was jointly owned by the spouses as tenants by the entirety, the husband exclusively controlled the property. It took the passage of the Married Women’s Property Acts and the enforcement of the U.S. Constitution’s Fourteenth Amendment’s Equal Protection Clause to change these formal strictures on the relationship of women and property.

Even with these changes, the interconnectedness of a lack of dignity, property, and home exists currently. This interconnectedness exists in laws that distribute property based on the family unit or children, rather than individuals. For example, following a divorce, use and possession of the home is based in large part on the presence of children, and their need to maintain their community, not on the parent’s needs. This lack of recognition of the parent’s independent basis from their children for dignity echoes scholar Lorna Fox’s conception that the individual woman often becomes invisible as a home owner or occupier while the family is highly visible.

While society has used property and home to devalue an individual’s dignity, people have used their homes to support and foster their dignity. Scholar bell hooks argues, that for women of color the home serves as a situs for individual resistance and dignity. bell hooks shows that for black women, and disadvantaged people more generally, the home has provided a respite from the outside societal pressure and racism and also a situs for development of oneself personally. Historically, black women established their homes in resistance to white supremacy and domination. This is because “an effective means of white subjugation of black people globally has been the perpetual construction of economic and social

and self-respect linked to property-holding.”); Gwen Hoerr Jordan, Agents of (Incremental) Change: From Myra Bradwell to Hillary Clinton, 9 Nw. L.J. 580, 584, 590 (2009) (discussing how coverture rendered a married woman “civilly dead” and how it was similar to slavery).

41 See Dannin, supra note 40, at 3 (explaining how before the 19th Century, a woman “lost control and, effectively, ownership of her personal and real property to a husband”); Jordan, supra note 40, at 590 (discussing how married women had no right to real or personal property pre-19th Century).

42 Batlan, supra note 40, at 830; Dannin, supra note 40, at 4 (“Title to land remained in the wife, but the husband was entitled to manage or rent her land during the marriage and could retain any profits.”); Fox, supra note 29, at 429-30.


44 Id. See also Dannin, supra note 40, at 5-7.

45 See, e.g., Md. Code Ann., Fam. Law § 8-206(1) (“to enable any child of the family to continue to live in the environment and community that are familiar to the child”). See also Md. Code Ann., Fam. Law § 8-208(b)(1) (stating that the best interest of the child will be a factor in the determination); Pitsenberger v. Pitsenberger, 410 A.2d 1052, 1058 (Md. 1980) (explaining that the court’s interests is to “ensure that when a marriage is dissolved, the interests of minor children in the family are given ‘particular and favorable attention’”); Laczkowski v. Laczkowski, 496 A.2d 56, 62 (Pa. Sup. Ct. 1985) (Divorce cases should yield to the “common law doctrine of parens patriae, the goal of which is to provide the child with a permanent home”).

46 Fox, supra note 29, at 440, 452-53.

47 Id. at 445, 447 (citing bell hooks, YEARNING: RACE, GENDER, AND CULTURAL POLITICS 42 (1990)).

structures that deprive many folks of the means to make homeplace.”

Specifically, hooks states that “[b]lack women resisted by making homes where all black people could strive to be subjects, not objects, where we could be affirmed in our minds and hearts despite poverty, hardship, and deprivation, where we could restore to ourselves the dignity denied us on the outside in the public world.” hooks also argues that “houses belonged to women, were their special domain, not as property, but as places where all that truly mattered in life took place – the warmth and comfort of shelter, the feeding of our bodies, the nurturing of our souls. There we learned dignity, integrity of being; there we learned to have faith.” As seen in bell hooks’ work, persons who are subjected to subordination outside of home find inside the home as a place of freedom and dignity.

Similarly, Professor Margaret J. Radin’s personhood theory argues that female home ownership can come not from the financial connection or the family relationships but from the occupier’s individual attachment to and relationship with the property. As Radin states, the home “is the scene of one's history and future, one's life and growth. In other words, one embodies or constitutes oneself there. The home is affirmatively part of oneself--property for personhood--and not just the agreed-on locale for protection from outside interference.” Property rights that are related to personhood, Radin argues, should take precedence over property rights that are not personal. Accordingly, Radin argues that there should be a prima facie case that the right to personhood property should be protected against the government or fungible, non-personal property claims. And if without this prima facie case, “the claimants' opportunities to become fully developed persons in the context of our society would be destroyed or significantly lessened” the case would be strongest. Radin’s personhood theory supports legal recognition of the connection between property and dignity.

D. Ending Domestic Violence, Supporting Dignity, and Affirming the Importance of Home

One study of low-income Puerto Rican women subjected to abuse and their relationship and need for housing shows the connection between

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49 Id. at 46.
50 Id. at 42.
51 Id.
52 Margaret Jane Radin, Property and Personhood, 34 STAN. L. REV. 957, 992 (1982).
53 Id.
54 Id. at 1013.
55 Id. at 1014-15.
56 Id.
ending domestic violence, supporting dignity and affirming the importance of home. In this study, the young women often entered intimate partner relationships not out of love but for an immediate need for housing as they left their abusive childhood homes. But when those intimate relationships became abusive, “[h]ousing . . . became a valued resource and source of power when [they] wanted out of their abusive intimate relationships and into housing they controlled.” The women “transposed their housing dependencies from intimate partners to housing they control.” The study showed that for these women, they found a source of power in their independent housing and that, even when the home was shared with an intimate partner, the women maintained their control over the home by making their partners live in the shadows and not join in the lease. The study also showed that “mothers . . . interpreted housing as a valued resource in intimate partner relationships in divergent ways with independent housing being seen as a bargaining tool to maintain or initiate relationships as well as a refuge for terminating relationships that experienced conflict.” As the study found, “[h]aving control over housing made it easier for [the women] to endure tenuous relationships.” As can be seen in the study of Puerto Rican low-income women, the home is a large determinant in ending violence. Women subjected to abuse may choose to control the relationship, or rearrange it in a way that the women maintain control and decrease their exposure to violence, by either living apart from the abuser or residing with him. And one’s home is a large determinant in this rearrangement.

II. CURRENT LEGAL SYSTEM

As the above discussion demonstrates, the goals of ending domestic violence, supporting each party’s dignity, and affirming the importance of home are critical goals for a legal system addressing domestic violence when the parties live together. This Part will address the many laws that govern the use, possession, exclusion of and responsibility for the home when there is domestic violence. While some of the laws fit these goals many of them do not and need reform.

58 Id. at 373.
59 Id.
60 Id.
61 Id.
A. Three Categories of Laws

I divide the laws that address the home when there is domestic violence into three categories: those that permit the person subjected to abuse to stay in the shared home and exclude the abuser; those that permit the person subjected to abuse to leave the shared home and obtain a new home; and those that permit the person subjected to abuse to stay in the shared home with their partner but ending the domestic violence.

First, there are several laws that permit a person subjected to abuse to stay in the shared home and exclude the abuser: (1) civil protective order (CPO) laws permit a petitioner, the person subjected to abuse, to obtain an order that excludes the respondent, the person abusing the other, from the home; (2) rental laws permit a person subjected to abuse to defend against eviction and bifurcate the leasehold when the landlord seeks to evict the co-tenant abuser and the co-tenant victim for the violence committed; and (3) rental laws permit a person subjected to abuse to require their landlord to change the locks to keep out excluded abusers.

Second, there are also laws that permit those persons subjected to abuse to leave and identify a new home if they wish to do so: (1) CPO laws that permit courts to order respondent to provide to petitioner an alternative home (or the money for a new home); (2) rental laws that permit a person subjected to abuse to terminate her lease early so she can go find a new home; and (3) anti-discrimination laws that protect a person subjected to abuse from discrimination in trying to obtain a new home (that may be rented or purchased) because she is a victim of domestic violence; and (4) laws funding domestic violence shelters and transitional housing.

Third, the civil protection order’s remedy of a “no further abuse” order is really the only civil law that aids a person subjected to abuse who wants to end the violence but stay in the shared home with the person who caused the abuse.

B. Petitioner Chooses to Stay in Home and Exclude Respondent

As discussed above, the first category of laws are those that permit a person subjected to abuse to stay in the shared home and exclude the abuser.

1. CPO’s Vacate Provision, Eviction Defense and Lock Change Laws

All fifty states and the District of Columbia have CPO statutes. Protective orders offer immediate, short-term and longer-term relief.62 The

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62 Catherine F. Klein & Leslye E. Orloff, Providing Legal Protection for Battered Women: An Analysis of
short-term relief is usually in the form of an emergency protective order (EPO) or a temporary protective order (TPO) and can be granted after an ex-parte hearing. An EPO might last until the next business day and a TPO might last until notice is provided to the respondent and both parties appear at the final protective order hearing. The longer-term relief is in the form of a final civil protective order (CPO). Some states’ CPOs last only six months and others can be permanent. I conducted a fifty-one jurisdiction survey (all fifty states and the District of Columbia) in order to explore the real property allocation permitted under CPO statutes. The CPO real property reallocation orders are often called “vacate” orders as they provide the petitioner the right to vacate, or exclude, the respondent from the petitioner’s home during the length of the order. How the respondent is excluded, which respondents may be excluded, and from what types of homes the respondent may be excluded varies greatly from jurisdiction to jurisdiction, as discussed below.

The second set of laws that permit the person subjected to abuse to stay in the home and exclude her abusive partner are those laws that permit a woman subjected to abuse to defend against a landlord’s eviction claim. In most residential leases, tenants breach the lease if a crime is committed on the premises. When there is domestic violence, landlords often evict not only the abusive tenant for a breach of lease but also the victim of violence. To remedy this unfair situation, eleven jurisdictions permit a tenant who is a victim of violence to defend against such an eviction.

Five states permit the lease to be bifurcated so that only the abusive person is evicted and a new lease is created with the remaining tenant, the woman subjected to abuse. Similarly, under the Violence Against Women Act (VAWA), public housing agencies or Section 8 landlords cannot evict individuals or terminate their assistance based on incidents of actual or threatened


See, e.g., MD. CODE ANN., Fam. Law § 4-504.1(a), (b) (West 2012) (authorizing court commissioner to issue an Interim Protective Order (Maryland’s EPO equivalent) ex parte when court clerk’s office is closed).

See, e.g., MD. CODE ANN., Fam. Law § 4-505(a) (West 2012) (authorizing court to issue a Temporary Protective Order ex parte).

See CONN. GEN. STAT. ANN. § 46b-15(d) (protective orders may last up to six months, and can therefore be extended if court deems an extension necessary) and MD. CODE ANN., Fam. Law § 4-506(k)(3) (West 2012) (permitting permanent FPO in certain circumstances). In Maryland, however, a permanent order may not include a vacate order. MD. CODE ANN., Fam. Law Art. § 4-506(k)(2) (West 2012).


domestic violence against them\textsuperscript{68} or based on criminal activity directly relating to such violence\textsuperscript{69} unless the landlord demonstrates that the individual’s continued tenancy would pose an “actual and imminent threat” to other persons on the property.\textsuperscript{70} Landlords also are given the power to bifurcate a joint lease in order to evict the individual causing violence but retain the tenant who is the victim of domestic violence.\textsuperscript{71} In addition, as with other VAWA housing provisions, under VAWA, landlords must provide individuals with notice of these VAWA rights.\textsuperscript{72}

The third set of laws is the lock change law for renters. Ten states have laws that permit the tenant to change the locks on her apartment because of domestic violence and a concern that the abuser would have keys to old locks to the apartment.\textsuperscript{73} This provision provides extra security to a tenant who has vacated the respondent from the home. The state laws protect the landlords from possible claims of unlawful lock outs of the abusive tenant as well.

2. Benefits for Achieving Goals

There are benefits to these three sets of laws -- CPO vacate provisions, eviction defense laws and lock change laws -- for the person subjected to abuse. In terms of the goal of ending domestic violence, the civil protection order’s vacate provision, when granted, does permit petitioner and respondent to be physically separated and thus creates a physical barrier to further physical abuse. This is also true of the lock change provision, which requires landlords to change the locks to provide extra assurance that the respondent cannot re-enter the rented home. As stated above, there is research that shows when women seek CPOs that are granted, their exposure to violence decreases.\textsuperscript{74} As to the goal of maintaining a home, the eviction defense laws preclude the landlord from evicting the person subjected to abuse from her home while evicting the abuser. In addition, the laws providing for bifurcation of the lease permit a tenant to create a sole tenancy while the landlord evicts the abusive partner.

In terms of the value of dignity and the home, these laws permit the person subjected to abuse to stay in the shared home and create a place of

\textsuperscript{68} 42 U.S.C. §§ 1437d(c)(5), 1437f(c)(9)(B) (2006).
\textsuperscript{70} 42 U.S.C. §§ 1437d(c)(3); 1437d(c)(5); 1437d(l)(6); 1437f(c)(9)(B); 1437f(c)(9)(C)(i)–(ii) (2006).
\textsuperscript{73} ARIZ. REV. STAT. § 33-1318 (LexisNexis 2012); ARK. CODE ANN. § 18-16-112 (2009); D.C. CODE § 42-3505.08 (LexisNexis 2001); 765 ILL. COMP. STAT. ANN. 750 / 20(West 2007); IND. CODE ANN. § 32-31-9-10 (2012); MD. CODE ANN., Real Prop. § 8-5A-06 (West 2012); N.C. GEN. STAT. § 42-42.3 (2011); OR. REV. STAT. § 90.459 (2011); UTAH CODE ANN. § 57-22-5.1 (LexisNexis 2012); VA. CODE ANN. § 55-248.18:1 (2012); WASH. REV. CODE ANN. § 59.18.585 (LexisNexis 2012).
\textsuperscript{74} See supra notes 12-14 and accompanying text.
development and expression of her individuality to support her dignity. She can stay in her community in which she is most likely connected to schools, employment, neighbors, and friends, and avoid the disruption of having to find a new place. In addition, if she chooses to end the relationship, the vacate order separating the parties respects her decision about rearranging her relationship with the respondent. And being able to stay in the shared home has the promise of keeping her from being homeless.

There are some advantages for the respondent as well. Seventeen jurisdictions recognize respondent’s property interests and limit the courts’ ability to vacate respondents if the home is solely-owned by respondent. These jurisdictions often require that the respondent have a family obligation to the woman or their children in order for the court to vacate him from his solely-owned property.75

3. Shortcomings for Achieving Goals

Despite these benefits, there are many shortcomings both for the woman subjected to abuse and the perpetrator of the abuse.

First, a petitioner may be unable to persuade a court to order respondent to vacate the home. The research shows that courts grant vacate orders at a low rate. Thirty-five out of fifty-one jurisdictions permit the court to exclude the respondent and/or grant possession of the residence to the petitioner, regardless of the title to the home.76 Yet courts’ concerns over the breadth of this property rights redistribution remedy may result in their reluctance to grant it. Moreover, if a woman has fled the home initially but then seeks to return to the home through the protective order the

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court may refuse to vacate the respondent who had stayed in the home.\(^{77}\) In a recent study of 80 plaintiffs who requested respondents vacate the residence, the judges granted the request only six percent of the time.\(^{78}\) An earlier study showed that instead of vacating the respondent, judges told over seventy percent of petitioners to leave the home.\(^{79}\) Another earlier study of 175 cases in Kentucky, three judges granted orders to vacate 25% of the time.\(^{80}\) And another multi-state study showed that 32.4% of protection orders granted a permanent order to vacate the residence.\(^{81}\) Therefore, the vacate order is not a reliable option for women in many jurisdictions.

The defense of eviction and lock change laws are also a limited option for women subjected to abuse because the vast majority of jurisdictions do not have these laws. Only eleven jurisdictions have eviction defense and lock change laws to protect private tenants.\(^{82}\) Therefore, women subjected to abuse may also lose their apartments once rented due to lease provisions that no violence or crimes shall occur on the premises. Moreover, landlords may attempt to evict women subjected to abuse along with the violent party because landlords refuse to create a new lease with only the woman’s name, especially if she suffers from the credit and financial issues discussed above.\(^{83}\) Public housing tenants and tenants using Section 8 vouchers are better off as the Violence Against Women

\(^{77}\) See email on file with author (petitioner counsel stating that this issue has risen multiple times in his jurisdiction). \textit{But see} Swenson v. Swenson, 490 N.W.2d 668, 670 (Minn. Ct. App. 1992) (reversing court’s refusal to vacate abuser from home). Also, a few jurisdictions’ laws specifically permit a petitioner to vacate a respondent even if the petitioner has left the home because of the abuse. \textit{S.D. CODIFIED LAWS} \textsection 25-10-9 (2012); \textit{TENN. CODE ANN.} \textsection 36-3-613 (West 2012); \textit{V.A. CODE ANN.} \textsection 16.1-253.4(F) (2012).

\(^{78}\) Valli Kaei Kanuha & Martha L. Ross, \textit{The Use of Temporary Restraining Orders (TROs) as a Strategy to Address Intimate Partner Violence}, 19 \textit{VIOLENCE & VICTIMS} 343, 349 (2004).

\(^{79}\) Kit Kinports & Karla Fischer, \textit{Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes}, 2 TEX. J. WOMEN & L. 163, 195-96 (1993). It is important to note that this study and others from the 1990s represent court decisions before the more recent efforts of domestic violence judicial education.


\(^{81}\) Susan L. Keilitz, Paula L. Hannaford, & Hillery S. Efkeman, \textit{National Center for State Courts, Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence} 65 (1997). The authors also note that the District of Columbia and Denver were more likely to grant such relief. \textit{Id.} at 13, 29.

\(^{82}\) The eviction defense statutes are the following: \textit{COLO. REV. STAT.} \textsection 38-42-402 (2011); \textit{D.C. CODE} \textsection 42-3505.01 (LEXISNEXIS 2012); \textit{IOWA CODE} §§ 562A.27A, 562B.25A(3) (2012); \textit{LA. REV. STAT. ANN.} \textsection 40.506(D) (2012); \textit{MD. CODE ANN.}, REAL PROP. \textsection 8-5A-05 (2012); \textit{MINN. STAT.} \textsection 504B.205 (2012); \textit{N.M. STAT. ANN.} \textsection 47-8-33(J) (LEXISNEXIS 2012); \textit{OH. REV. STAT.} \textsection 90.449 (2011); \textit{VA. CODE ANN.} \textsection 55-248.31(D) (2012); \textit{WASH. REV. CODE ANN.} \textsection 59.18.580 (LEXISNEXIS 2012); \textit{WIS. STAT.} \textsection 106.50 (2012). \textit{See also} Johnson, \textit{supra} note 66. The states with bifurcations are Arkansas, Indiana, New York, Oregon and Wisconsin. \textit{Id.}

\(^{83}\) The lock change laws are the following: \textit{ARIZ. REV. STAT.} \textsection 33-1318 (LEXISNEXIS 2012); \textit{ARK. CODE ANN.} \textsection 18-16-112 (2009); \textit{D.C. CODE} \textsection 42-3505.08 (LEXISNEXIS 2001); 765 ILL. COMP. STAT. ANN. 750 / 20 (West 2007); \textit{IND. CODE ANN.} \textsection 32-31-9-10 (2012); \textit{MD. CODE ANN.}, REAL PROP. \textsection 8-5A-06 (West 2012); \textit{N.C. GEN. STAT.} \textsection 42-42.3 (2011); \textit{OH. REV. STAT.} \textsection 90.459 (2011); \textit{UTAH CODE ANN.} \textsection 57-22-5.1 (LEXISNEXIS 2012); \textit{VA. CODE ANN.} \textsection 55-248.181 (2012); \textit{WASH. REV. CODE ANN.} \textsection 59.18.585 (LEXISNEXIS 2012).

Act (VAWA) provides coverage for these tenants for protection from eviction. Further, the tenant often is required to bear the cost of the lock change. For tenants and homeowners, only nineteen jurisdictions explicitly provide reimbursement for changing one’s locks under their crime victims’ compensation funds.

Another shortcoming of CPO vacate laws is that even if a petitioner can get a CPO against the respondent that limits respondent’s access to the home, many of the laws do not permit the court to deprive respondent of all of his property rights during the life of the CPO. The respondent may use his remaining rights in the property to continue to use the home to abuse petitioner. Some states provide for the respondent to be excluded or vacated from the home, thereby removing the respondent’s possessory interests, but do not order him to stay away from the home. Some jurisdictions permit the court to order

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87 E.g., ALA. CODE § 30-5-7 (C)(3) and (d)(1), (4); ALASKA STAT. § 18.66.100 (2012) ARK. CODE ANN. § 9-15-205 (2012); COLO. REV. STAT. § 18-1-1001 (2012); FLA. STAT. ANN. § 741.30 (2012); HAW. REV. STAT. §§ 586-46(c), 586-5.5 (West 2012); IDAHO CODE ANN. §39-6306(1)(c) (West 2012); IND. CODE ANN. § 34-26-5-9 (2012); IOWA CODE ANN. §236.5 (2012); KAN. STAT. ANN. § 60-3107 (West 2012); KY. REV. STAT. ANN. § 403.750 (West 2012); ME. REV. STAT. tit. 19-A, § 4007 (2011); MASS. GEN. LAWS ANN. ch. 209A, § 3 (West 2012); MICH. COMP. LAWS ANN. § 600.2950 (West 2012); MINN. STAT. §§ 518B.01 (2012); MISS. CODE ANN. § 93-21-15 (2008); MO. ANN. STAT. § 455.050 (West 2012); MONT. CODE ANN. § 40-15-204 (2011); NEB. REV. STAT. § 42-924 (2012); NEV. REV. STAT. ANN. § 33.030 (2011); N.C. GEN. STAT. § 50B-3 (2012); N.D. CENT. CODE ANN. § 14.07.1-08 (West 2011); 23 PA. CONS. STAT. ANN. § 6108 (West 2012); R.I. GEN. LAWS ANN. § 15-15-3 (West
respondent to stay away from the home, only, and do not remove his right to possession or even require that he vacate himself and his belongings.\textsuperscript{88} Other CPO vacate provisions simply award possession to petitioner.\textsuperscript{89} The problem with these inconsistencies is that it is possible that the laws would still permit respondent access to the home or at least the ability to use the home to perpetrate some abuse of and control over petitioner. Either result would not further the goal of ending domestic violence through the woman’s control of her home. For example, if the law does not provide petitioner with exclusive possession of the home, respondent will maintain the possessory rights he had prior to the CPO. If he was ordered to stay away only and there was no grant of exclusive possession to petitioner, while respondent could not enter the premises and take possession, he could transfer his possessory rights to another.\textsuperscript{90} With his possessory rights, respondent could continue his exercise of power and control by creating an involuntary roommate for the woman.

The third disadvantage is that states do not offer enough options for a woman to economically maintain the shared home if she chooses to exclude her abuser. Only New Jersey provides specifically for respondent to pay his share of the rent of the mortgage for the home once he is vacated.\textsuperscript{91} It is possible that courts could order respondent to pay rent, the mortgage or other household expenses under a “catch-all” remedy. Unfortunately, only six states and the District of Columbia have a catch-all remedy.\textsuperscript{92}

In addition, only two states restrain the respondent from cancelling utilities during the life of the CPO\textsuperscript{93} and only three jurisdictions preclude the parties from transferring, encumbering or disposing of the

\textsuperscript{88} S.C. CODE ANN. § 20-4-60 (2012); S.D. CODED LAWS § 25-10-5 (2012); TENN. CODE ANN. § 36-3-606 (West 2012); TEX. FAM. CODE ANN. § 85.022 (West 2011); UTAH CODE ANN. § 78B-7-106 (LexisNexis 2012); VT. STAT. ANN. tit. 15 § 1103 (2012); WASH. REV. CODE ANN. § 26.50.060 (LexisNexis 2012); and W. VA. CODE ANN. § 48-27-403 (West 2012).
\textsuperscript{89} See, e.g., COLO. REV. STAT. § 18-1-1001 (2012); HAW. REV. STAT. §§ 586-4(a)(3), 586-5.5 (West 2012); MASS. GEN. LAWS ANN. ch. 209A, § 3 (West 2012); N.Y. FAM. CT. ACT § 842 (McKinney 2012); UTAH CODE ANN. § 78B-7-106 (LexisNexis 2012); VT. STAT. ANN. tit. 15 § 1103 (2012); WIS. STAT. § 106.50 (2012).
\textsuperscript{91} This situation happened in a recent Georgetown clinic case. It should be noted that in a few jurisdictions, the law specifically permits the court to order respondent not to transfer the property. E.g., S.C. CODE ANN. § 20-4-60 (2012); TEX. FAM. CODE ANN. § 83.006 (West 2011); W. VA. CODE ANN. § 48-27-403 (West 2012); and WYO. STAT. ANN. § 35-21-105 (2012).
\textsuperscript{92} N.J. STAT. § 2C:25-29.
\textsuperscript{94} KAN. STAT. ANN. § 60-3107 (West 2012) and VA. CODE ANN. § 16.1-279.1 (2012).
home during the life of the CPO. Accordingly, if a woman is able to successfully vacate the respondent, in most cases, petitioner is left to pay for the mortgage, rent and the household expenses with only her one income, if she even has that, and this may make the living situation untenable for her.

Yet even if petitioner is awarded the vacate order, the lock change, and/or defended against eviction, physically excluding respondent from the home is not always the solution to ending the domestic violence. In fact, the separation itself can increase the violence. Research has shown that for certain women, separation may heighten the violence. Options beyond physical separation need to be created to more thoroughly address the societal epidemic of domestic violence.

For the respondents, the CPO vacate provision, eviction defense and lock change laws have many shortcomings as well. Several shortcomings reflect the dissonance between vacate orders and property law. The first and most significant shortcoming of the CPO vacate provision and lock change laws are that they infringe upon a respondent’s property rights. And because a respondent can be vacated from his solely owned property in thirty-four jurisdictions, even if not married to the petitioner, the law seems unjust. This seeming injustice can negatively impact a respondent’s compliance with the CPO requiring cessation of violence. In addition, legislators have shown reluctance to expand relief under civil protection orders because of their perception that vacate provisions are unjust.

Previously, respondents have been unsuccessful in arguing that the vacate orders are an unconstitutional taking without just compensation. Because the vacate order does not disturb the respondent’s title and is temporary in nature, courts have to date found the vacate order constitutional. As discussed earlier, thirty-five jurisdictions permit the petitioner to exclude the respondent in some manner from the home even if

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95 Johnson, supra note 4, at 1127-28 (citing LENSORE E. A. WALKER, ABUSED WOMEN AND SURVIVOR THERAPY: A PRACTICAL GUIDE FOR THE PSYCHOTHERAPIST 55 (1994)).
96 GOODMAN & EPSTEIN, supra note 17, at 97-98.
98 U.S. CONST. amend. V (“No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation”); U.S. CONST. amend. XIV, §1 (applicable to states).
the petitioner is not on the deed or lease. This means that respondent could lose the right to possess, occupy, include or exclude persons from the home during the period he is vacated without any compensation. While it remains true that most jurisdictions’ CPO vacate provisions last for a limited time, it is also true that in some jurisdictions the CPO is longer. For instance, in New Jersey the CPO permits courts to enter permanent orders of exclusive possession to the plaintiff, regardless of ownership interests in the home. Although the New Jersey statute also makes clear, as do twelve other jurisdictions, that the CPO has no effect on the title to the home, a permanent CPO with exclusive possession granted to plaintiff means respondent cannot exercise many of the rights of property ownership for the life of the CPO, which may be equal to petitioner’s life. Therefore, petitioner could possess exclusively the respondent’s home for petitioner’s life. Because permanent CPOs have not been challenged under the due process arguments made to short-term TPO and CPO laws, it is a question whether such permanent deprivation of many of the indicia of property ownership would no longer constitute a taking.

The laws in the other seventeen jurisdictions permit a vacate order when respondent is the sole owner only under circumstances where respondent is in a familial relationship with petitioner, such as a spouse or parent of a child-in-common. Those laws seem less unjust to respondent because they fit into the existing legal landscape of marital property and family law’s duty of spousal or child support.

A second shortcoming of vacate laws for respondents is they do not fit well with common law property principles of co-ownership. In property law, when there are co-owners, they have an equal right to possess the property. If one co-owner excludes the other co-owner, she could commit an ouster that would require the possessing co-owner to pay rent to

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101 See supra note 76.
102 N.J. STAT. §2C:25-29.
103 See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 441 (1982) (finding a taking requiring just compensation when a permanent physical occupation of an owner’s property is authorized by the government to be a taking).
104 See Joseph Singer, Introduction to Property 375 (2001); Randy Frances Kandel, Family Law: Essential Terms and Concepts 38 (2000); Katharine K. Baker & Katharine B. Silbaugh, Family Law: The Essentials 91 (2009). In addition to the duty of support, each spouse owes the other a duty of services as well. Baker & Silbaugh, supra, at 91 (2009). See also Judd v. Meszaroz, No. 10AP–1189, 2011 WL 4489049, at *7-8 (Ohio Ct. App. Sept. 29, 2011) (explaining that the statute has restrictions on vacating property, such that it can only be granted if the respondent has a duty to support the petitioner or other household members, and that the ruling does not impact title); Katsenelenbogen v. Katsenelenbogen, 775 A.2d 1249, 1257-58 (Md. 2001) (explaining that to grant a vacate order, judges must consider “factors set forth in §4-506(e),” which provides “a certain balance” between “protection of those who have been subjected to abuse” and “plac[ing] some limits on the right to relief allowed”).
105 Singer, supra note 104, at 348 (2001). See generally Gabay v. Bender, 823 N.Y.S.2d 389, 390 (2006) (“Any co-owner of real property has the right to enter upon the common estate and take possession of the whole thereof, subject only to the equal right of co-owners in interest with whose possession he or she may not interfere”); Pettus v. Atchafalaya Wildlife Protective Soc., 351 So. 2d 790, 793 (La. Ct. App. 1977) (“The right of a co-owner to use and possess property held in common is equal to that of other co-owners”).
the out of possession co-owner.106 If there is an ouster, the occupying co-owner owes rent to the excluded co-owner.107 Ouster law anticipates only back rent or re-entry and possession of the ousted party as the remedy.108 Ouster law does not recognize excluding from possession the ousting party. Under the vacate laws, the petitioner has a court order effectively ousting the respondent, but the order does not alter respondents’ rent or mortgage obligations and the order does not require petitioner to pay respondent back rent.

A third shortcoming of vacate laws for respondents is that courts can grant a mere cohabitant a vacate order against a respondent. For example, in Maryland, if the petitioner has been cohabitating with the respondent in his solely-owned home for at least 90 days, she can vacate respondent from his home through the CPO. This is starkly different from property law which in general does not recognize property rights of possession, use, or inclusion for cohabitating, unmarried non-titled possessors of property. An exception is that in a few jurisdictions, such as Massachusetts, when a long-standing couple shares a home owned by one of them where the title-holder had promised to convey joint title, but had not, the non-owner does acquire an ownership interests in the home at the end of the relationship.109

As a result of dissonance between property and vacate laws, respondents and courts, among others, often view the civil protective order legal system as lacking fairness when it permits respondent to be vacated from his home that is solely-owned and non-marital property. The Bisnath case cited at the beginning of this article demonstrates this principle. There the court found that respondent had abused petitioner, and granted all of the relief in the petition except the request for a vacate order. The court stated, “Where is he going to live?”110

As Professor Deborah Epstein has explained the social psychology of authority shows that “[t]he likelihood of a person's compliance with . . . [court] orders . . . is at least as firmly rooted in his perception of fair process as in his satisfaction with the ultimate result.”111 According to Epstein, a

106 SINGER, supra note 104, at 351. As explained by Singer, “An ouster can be accomplished only by such conduct as is sufficient both to exclude the non-occupying tenant(s) and to communicate to them an intent to do so. Mere occupation of property by one of several owners is not sufficient to communicate an intent to oust the others.” Id. at 351 n.99. It is important to note that certain states codified laws that prohibited one spouse ousting another spouse. See SUK, supra note 30, at 21-25.

107 Id. supra note 104.

108 Id.


111 Epstein, supra note 7, at 1846.
fair system “enhances a person's sense that authorities are moral and legitimate. This perception facilitates a person's sense of self-worth and, in turn, his degree of compliance, even when this conflicts with immediate self-interest.”

Criminological theory about dignity supports the procedural justice theory. Specifically, Epstein cites that “John Braithwaite’s shaming theory holds that court-sanctions imposed in a manner that harms a person’s dignity may result in an increase in future offending. Conversely, sanctions imposed in a respectful manner that honors human dignity may increase compliance with authority.”

Under Professor Tom Tyler’s theory of procedural justice, there are four factors that contribute to judgments that a process, such as a court proceeding, is fair: (1) “opportunities for participation (voice),” (2) “the neutrality of the forum,” (3) “the trustworthiness of the authorities,” and (4) “the degree to which people receive treatment with dignity and respect.”

A study of police interactions with men who had committed domestic violence found that if they felt they were fairly treated during their interaction with the police the men complied with the law in the future. The study also found that perceptions of fairness were more important for future compliance than any police punishment (such as arrest or fines).

A respondent may view the CPO legal system as lacking fairness when it permits him to be vacated from his home that is solely-owned and non-marital property. In those jurisdictions where there is no process for explaining one’s attachment to the home, whether one has alternative living arrangements if vacated from the home, as well as other important and relevant facts, the court does not provide respondent a voice in shaping the outcome of the vacate order and the respondent could perceive that he is not being treated with dignity and respect. As a result, a respondent may feel that the process is not fair and he will not comply with the resulting order. The value of ending domestic violence may be undermined by respondents’ noncompliance in the long-term.

Another shortcoming of the current legal landscape regarding ending domestic violence and home is that if vacated, the respondents are left looking for a new home. And yet there are no shelters for men who abuse in the United States. Interestingly, there is a shelter for abusive men in Israel called Beit Noam. It is a live-in treatment center for abusive

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112 Id. at 1864.
113 Id. at 1877.
115 Id. at 440 (Citing Paternoster, Brame, Bachman, and Sherman, 1997).
116 Lora Bex Lempert, Shelters: For Abused Women, or Abusive Men? As Aids to Survival, or as Rehabilitation Sites?, 57 Agenda 89, 98 (2003); Ophra Keynan et al., Beit Noam: Residential Program for Violent Men, 7 J. Aggression, Maltreatment & Trauma 207, 208-09 (2003).
men that has good results in reducing future violence.117 Beit Noam boasts a zero recidivist rate of domestic abuse, as compared to the twenty-five percent rate for batterer intervention programs that are not shelters in the United States.118

Without U.S. shelters for men who abuse, a perpetrator of domestic violence may be separated from the person whom he had abused, but his unstable home may nonetheless negatively affect his former partner and any children. He may be reliant on his community to support his new home, or to rely on the homeless shelter system, which is underfunded and under-resourced.119 If the woman subjected to abuse and the person who abused her have children in common, the lack of a more permanent home may make it difficult for the father to maintain his involvement in the children’s life, through custody or visitation.120 The lack of a home also may create obstacles to maintaining employment, which in turn may affect financial support of the children and maintenance of the shared home and household expenses.121

A potential disadvantage of the eviction defense laws for persons who perpetrate domestic abuse is that those laws often do not permit a bifurcation of the lease, in which the evicted perpetrator would be removed from the lease and attendant obligations. If the lease is not bifurcated, but the perpetrator of abuse is evicted from the rented home while the victim of the abuse remains, the perpetrator may continue to be liable for any default by the possessing victim, such as rent or damage to the property.

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117 Lempert, supra note 116, at 98; Keynan et al., supra note 116, at 234 (showing reductions in physical violence in short-term but needing long-range study to determine effectiveness in long-term).

118 Lempert, supra note 116, at 98; Keynan et al., supra note 116, at 233. See also Eric S. Makowski et al., Collateral Damage: An Analysis of the Achievements and Unintended Consequences of Batterer Intervention Programs and Discourse, 17 J. FAM. VIOLENCE 167 (2002).


120 See Rebecca Licavoli Adams, California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?, 9 HASTINGS RACE & POVERTY L. J. 1, 15, 22 (2012) (explaining that “financial abuse is a common type of domestic violence so victims may also have trouble securing housing” and even when housing is secured, women and children may be evicted when the father shows up for visitation); Shirley Darby Howell, Domestic Violence, Flawed Interpretations of 42 U.S.C. § 1437(d)(6), Sexual Harassment in Public Housing, and Municipal Violations of the Eighth Amendment: Making Women Homeless and Keeping Them Homeless, 13 T.G. JONES L. REV. 1, 3-5 (2008) (explaining that at least “fifty percent of homeless women became homeless as a direct result of domestic abuse,” many of whom have children and now live on the streets).

121 Anne R. Roschelle, Welfare Indignities: Homeless Women, Domestic Violence, and Welfare Reform in San Francisco, 25 GEND. ISSUES 193, 194, 202 (2008) (explaining that abusive men “sabotage women’s training and employment responsibilities” barriers to employment are exacerbated by the exigencies of homelessness, especially for “homeless women who are also victims of domestic violence” for whom “barriers can become insurmountable”); Stephanie Riger, Sheela Raja & Jennifer Camacho, The Radiating Impact of Intimate Partner Violence, 17 J. INTERPERS. VIOLENCE 184, 200 (2002) (“Women with children who do not have family support or access to affordable child care may find it particularly difficult to establish themselves financially and vocationally.”); Pamela H. Zappardino & Deborah DeBare, In Search of Safety: Double Jeopardy for Battered Women, NEW ENGLAND J. OF PUB. POL., 753, 757 (1992) (“Child custody issues inevitably complicate the situation for a battered woman who has left her home.”).
C. Petitioner Chooses to Leave Home and Respondent Stays in Home

There are four sets of laws addressing the situation of a woman subjected to abuse choosing to leave the shared home, looking for a new home, and the respondent staying in the previously shared home.

1. CPO Alternative Housing Provision, Early Lease Termination, Anti-Discrimination, and Shelter and Transitional Housing Funding Laws

Under certain CPO laws, the court may order a respondent to provide petitioner with new housing as an alternative to staying in the shared home.\(^{(122)}\) In addition, certain rental laws permit persons subjected to abuse to terminate their lease early without penalty to permit them to move away from their abuser.\(^{(123)}\) Anti-discrimination laws protect domestic violence victims who are seeking to rent an apartment or purchase a home with a mortgage.\(^{(124)}\) And finally, various funding laws for shelters and transitional housing assist women subjected to abuse with limited economic means to nonetheless find a new temporary home.\(^{(125)}\)

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\(^{(125)}\) For FY2011, President Obama requested $649.36 million for violence against women programs. Twenty-five million dollars were for Transitional Housing Assistance grants through the Department of Justice and $140
A woman subjected to abuse may seek a new home to create her personhood interest, develop her personal identity, or form strong community bonds. Sometimes a woman seeks a new home not because she wants to leave the shared home but because under the laws of her jurisdiction or as a result of the high rate of denial of a vacate request she was unable to exclude the respondent from the shared home. If she was denied a vacate order, but wants to separate, then she must find a new home. The woman also may seek a new home rather than cause her abusive partner to be vacated because she feels that it is the best option for her in regards to her safety or other issues. She may want a home with an address unknown to respondent. An early lease termination law, for example, would permit the tenant to break her lease and move, undetected by her former abusive partner, to a new undisclosed location.

2. Benefits for Achieving Goals

There are several important benefits to these laws: All of these laws facilitate the agency of a person subjected to abuse by offering short-term alternative homes. As noted earlier, support of a woman’s agency can result in a decrease of the violence. Moreover, there may be a decrease of the violence through physical separation, although the research also shows that separation can increase violence in certain circumstances.

Moreover, these laws remove barriers to obtaining long-term homes. For example, anti-discrimination laws generally prevent landlords from rejecting rental applicants on the basis that the potential tenant was a petitioner in a CPO case, even if the landlord fears that such applicants may enter into violent relationships in the future and that violence would disrupt other tenants. These laws also protect domestic violence victims, who, as applicants for mortgages, sometimes are seen as risky debtors and unlikely to repay mortgage loans. These laws prohibit

million were for Family Violence Prevention/Grants for Battered Women’s Shelters administered by HHS. GARRINE P. LANEY, CONGRESSIONAL RESEARCH SERVICE, VIOLENCE AGAINST WOMEN ACT: HISTORY AND FEDERAL FUNDING 2 (2010). The Keeping Children and Families Safe Act of 2003, P.L. 108-36, and the PROTECT Act, P.L. 108-21, also authorized funds for HHS and DOJ transitional housing assistance programs for victims of domestic violence. Id. For FY2011 funding, the President requested $25 million for DOJ’s transitional housing assistance program. Id. at 4. The 2010 Consolidated Appropriations Act provided $210 million for STOP grants, which included $18 million for transitional housing assistance grants. Id. at 17 n.b. The Transitional Housing for Victims of Domestic Violence authorization, administered by HHS, expired after Y2008. This HHS program never received appropriations. Id. at 18 n. j. See supra notes 76 to 81 and accompanying text.
126 See supra notes 12-14 and accompanying text.
127 See supra notes 12-14 and accompanying text.
128 See Violence Against Women Act, 42 U.S.C.A. § 14043c-1 (West 2006). In addition, eight states have specific fair housing acts protecting victims of domestic violence. See LEGAL MOMENTUM, supra note 124 (identifying eight jurisdictions and Westchester County, NY as having anti-discrimination laws protecting domestic violence victims).
129 Lapidus, supra note 83, at 384.
mortgagees from refusing to loan money because the applicant was or is a victim of domestic violence. Accordingly, laws that prohibit discrimination on the basis of experience with domestic violence support women’s efforts to move to a new home. These anti-discrimination laws recognize the dignity of persons and refuse to let it be overshadowed by subjugation to intimate partner violence.

Laws that assist victims who seek new homes also benefit respondents. If a victim of violence is able to find a new home, the respondent is more likely to be able to remain in the shared home, with the attendant benefits of maintaining his place of identity development and connection to his community. In addition, a very tangible benefit is that he will not be homeless provided he can afford maintaining the home.

4. Shortcomings for Achieving Goals

The laws addressing women subjected to violence seeking a new home have not been a panacea, however. In the main, too few jurisdictions provide for alternative housing in the CPO laws, early lease termination or protection from discrimination. Under the CPO laws, only eleven states specifically require the respondent to provide alternative housing. This option often is available only if the respondent has a duty to support the petitioner or their children and the shared home is solely owned by respondent. The alternative housing option under the CPO demonstrates Lorna Fox’s position that too often the home is based on a woman’s familial relationships rather than her own identity and needs. Only two states specifically require respondent to pay rent for petitioner’s alternative housing. Accordingly, the limited availability of the alternative housing option undermines supporting a woman’s dignity in answering for herself the meaning of her life through development of her home.

For tenants in federally-funded housing, there are more options for alternative housing and they are not linked to women’s familial relationships. Under the Violence Against Women Act (VAWA), the federal government supports the choice of a tenant who resides in federally-funded public housing unit or receives federally-funded housing assistance, such as Section 8 vouchers, who decides to transfer or seek reassignment to


132 See supra note 46 (discussing Fox’s theory that the individual female homeowner is invisible and the family as home occupier is highly visible).

a different unit if she was subjected to domestic violence. If she is a private tenant, however, only fourteen jurisdictions permit her to terminate her lease early because of domestic violence. If she is able to terminate her lease early, she may have difficulty finding a new home. Prospective private landlords may refuse to rent to her in order to avoid any future domestic violence on the premises. Such discrimination is possible in most jurisdictions as only eight jurisdictions have anti-discrimination laws.

Under VAWA, public housing authorities and Section 8 landlords cannot deny admission to housing or use of her voucher because she is a victim of domestic violence.

Further, women subjected to abuse may have difficulty finding a new home because of the effects of the abuse to which they were subjected. Victims of domestic violence often are isolated from family, friends and support networks. The isolation can result from intentional actions by the abuser or from the woman’s efforts to protect herself. As Professor Adele Morrison states, “Secrecy, silence and shame are also aspects of the abuse itself. Abusers use shame and secrecy as tools to control those they are victimizing.”

Professor Beverly Balos has discussed how this resulting isolation is a barrier to women subjected to abuse who want to leave the home. A woman isolated from family and friends may have difficulty requesting temporary shelter or financial support. Moreover, if isolated from the broader community, the woman may have difficulty knowing what resources might exist for her, such as temporary shelter, money for moving expenses and accessing transitional housing. Professor Berta Esperanza Hernandez-Truyol explains that “Latinas who suffer domestic violence are less likely than other women to contact friends, family or clergy. The result is complete isolation that prevents Latinas from escaping abuse and protecting their children.”


139 Adele M. Morrison, Changing the Domestic Violence (Dis)course: Moving from White Victim to Multi-Cultural Survivor, 39 U.C. Davis L. Rev. 1061, 1087 (2006).

receiving help.”

Even if the woman is successful in finding a new home, her isolation may be exacerbated by moving to a new home away from the community. For example, many shelters are placed in confidential locations and thus can dislocate the woman from her community. Even if separated from her abuser and living in a new home or shelter, isolation can increase a woman’s risk of violence. As Professors Epstein and Goodman explain, “research shows that women in hidden locations are no safer during their stay than women in open shelters where community members can participate in keeping residents safe.”

In addition, women cannot benefit fully from existing laws which permit or encourage them to leave a home shared with a violent partner because women continue to have insufficient economic resources to leave the home. One study showed that for African American women, “economic dependence on her husband” was the primary factor causing a return to an abuser. Even after extricating herself from lease obligations in the shared home, and even with protection from housing discrimination, for example, a woman who has been abused, like other potential tenants, needs money to pay for moving expenses, first and last months’ rents, down-payment on mortgage and deposits for utilities. Unlike many other tenants, however, a woman seeking a new home because of abuse may have little time to gather funding. If she finds temporary shelter upon leaving the shared home, she may have only the length of a shelter stay, often as little as twenty days, to accumulate sufficient resources; if she is unable to locate emergency shelter, she may need the funds immediately. For those women who live in one of the twenty jurisdictions that have crime victims’ compensation fund monies that provide explicitly for relocation expenses, she may be able to access those funds. Unfortunately, those monies do

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142 GOODMAN & EPSTEIN, supra note 17, at 102 (citing Haaken and Yragui 2003 study); SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT 59 (1982) (One Puerto Rican advocate stated “Puerto Rican women who come to the shelter are very scared. They don’t want to leave their community and come to a new place. They may have language problems. They don’t drive. They may never have paid bills nor done a budget. They particularly dislike having to share rooms with other people, both black and white women. They have never lived this way before. They’re not used to living collectively or sharing apartments like white women do.”)
144 Id. (“For women who use shelters, however, limited resources often trap them with their assailants.”)
145 See, e.g., Martin Donohoe, Homelessness in the United States: History, Epidemiology, Health Issues, Women and Public Policy, WOMEN’S HEALTH, Sept. 2004 (“Average length of stay at a US shelter is 14 days; most allow a 30-day maximum stay.”)
146 Id. (“For women who use shelters, however, limited resources often trap them with their assailants.”)
147 See, e.g., Martin Donohoe, Homelessness in the United States: History, Epidemiology, Health Issues, Women and Public Policy, WOMEN’S HEALTH, Sept. 2004 (“Average length of stay at a US shelter is 14 days; most allow a 30-day maximum stay.”)
not exist in the majority of jurisdictions.

Many victims of physical, psychological or emotional abuse also are subjected to various forms of economic abuse, potentially exacerbating the financial crisis in which a woman may find herself when seeking a new home. Financial abuse may include actions by the abuser that damage the woman’s credit rating, sabotage her employment, require her to turn over any income earned to her partner, or exclude her from access to family monies. As a result of the abuse, the petitioner’s work, credit and/or financial records may be poor. Therefore, landlords and mortgage companies may refuse to rent and/or loan money to her for housing.

But access to short-term housing options, such as shelters and transitional housing, are not just limited by a woman’s economic means.


148 GOODMARK, supra note 16; Johnson, supra note 138, at 1115-1124.
149 Lapidus, supra note 83, at 385.
150 For example, in Washington, D.C. there are ninety-six shelter beds that provide twenty to thirty day stays on average. In addition, there is available emergency shelter in local hotels for an average of three nights. The emergency shelter offered 375 adults and approximately 700 children shelter in 2011. Statistics, D.C. SAFE, http://dcsafe.org/domestic-violence-info/statistics/ (last visited Feb. 20, 2013). Yet when one compares the numbers of persons able to be served to the 5,401 persons seeking domestic violence assistance by visiting the Domestic Violence Intake Center in Washington, D.C., it becomes clear that the number of people sheltered is...
Such housing options are also limited by the public funding for them. Routinely, public funding is high for the criminal justice response to domestic violence and much lower for housing. For example, the 2010 Consolidated Appropriations Act provided $189 million for STOP grants,\textsuperscript{152} monies which fund the criminal justice system response to domestic violence.\textsuperscript{153} The STOP grants budget has remained at the same level since 2010.\textsuperscript{154} The Act provided only $18 million for transitional housing assistance grants.\textsuperscript{155} While the allocation for transitional housing increased to 25 million in 2012,\textsuperscript{156} President Obama requested 3 million less for 2013 transitional housing funding.\textsuperscript{157} The Family Violence Prevention and Services Act, which provides money for domestic violence shelters along with counseling and hotline services, provided 130 million in 2010.\textsuperscript{158} President Obama’s proposed budget for FY 2013 is 135 million.\textsuperscript{159}

Even with the funding provided,\textsuperscript{160} local shelters and transitional housing turn away tens of thousands of persons subjected to abuse each year.\textsuperscript{161} In 2009, although able to serve over one million victims of

\textsuperscript{152} CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, FY 2013 APPROPRIATIONS BRIEFING BOOK 8 (2012), available at http://www.nndv.org/docs/Policy/FY_13_Briefing_Book.pdf (STOP grants for law enforcement agencies and prosecutor offices).

\textsuperscript{153} For example, DASH, a new nonprofit focusing on safe housing in Washington, D.C., has doubled the number of transitional housing units to 43. DISTRICT ALLIANCE FOR SAFE HOUSING, http://www.dashdc.org (last visited Feb. 20, 2013). That still is far fewer units than needed for the large percentage of the 5,401 persons who visit the Domestic Violence Intake Center in DC and need housing. See D.C. SAFE, supra note 150 and author’s personal experience with the clients her clinic student’s represent.

\textsuperscript{154} CAMPBELL, supra note 16, at 305 (stating that criminal justice response, and especially encouraging arrest policies, were “by far the largest category” of STOP funding). The Department of Justice explains that “the STOP Program promotes a coordinated, multidisciplinary approach to enhancing advocacy and improving the criminal justice system’s response to violent crimes against women. It encourages the development and improvement of effective law enforcement and prosecution strategies to address violent crimes against women and the development and improvement of advocacy and services in cases involving violent crimes against women.” Grant Programs, U.S. DEP’T OF JUSTICE, http://www.ovw.usdoj.gov/ovwgrantprograms.htm#17 (last visited Feb. 24, 2013). As stated on the Michigan Department of Human Resources website, victim service programs are allocated 30% of the STOP grants as opposed to criminal justice system, which received 50%. Specifically, the website states, “The federal STOP Violence Against Women program requires communities to show how it will allocate at least 25% of the grant to law enforcement, 25% to prosecution, 5% to courts, and 30% to victim services programs. The remaining 15% may be spent in any way the group decides is appropriate, but it must conform to the federal grant guidelines.” STOP Violence Against Women Grants, MICH. DEP’T OF HUMAN SERVS., http://www.michigan.gov/dhs/0,4562,7-124-7119_7261_7272-15062--00.html (last visited Feb. 20, 2013).

\textsuperscript{155} CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, supra note 152, at 6.

\textsuperscript{156} Id. The Transitional Housing Assistance Program to provide holistic, victim-centered support services that move individuals into permanent housing. US DEP’T OF JUSTICE, supra note 155.

\textsuperscript{157} CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, supra note 152, at 6.

\textsuperscript{158} Id. at 7.

\textsuperscript{159} Id.

\textsuperscript{160} It is important to note that there are other federal housing assistance programs such as the Housing and Urban Development’s McKinney-Vento Supportive Housing Program State Departments of Social Services and the Federal Emergency management Agency. See also Alyse Faye Haugen, Comment, When it Rains it Pours: The Violence Against Women Act’s Failure to Provide Shelter From the Storm of Domestic Violence, 14 THE SCHOLAR 1035, 1063 n.138 (2012).

\textsuperscript{161} STATE FACTS, NAT’L COALITION AGAINST DOMESTIC VIOLENCE, http://www.ncadv.org/resources/FactSheets.php (last visited Feb. 23, 2013). For instance, “[i]n 2007, 8,324 men, women and children were turned away from shelters in Missouri because they were full.” NAT’L COALITION
domestic violence, shelters denied 167,069 requests due to lack of capacity.\textsuperscript{162} Sixteen domestic violence shelters closed in 2009.\textsuperscript{163} And in just one day in 2011, 10,581 requests for shelter and other nonresidential services were denied because of a lack of resources.\textsuperscript{164} 5,149 adults and 7,551 children were in transitional housing in just one day in 2011.\textsuperscript{165} And on that same day, 2,629 persons requesting transitional housing were denied housing because of a lack of available units.\textsuperscript{166}

For those women able to enter the shelters, the maximum stay is often 30-days.\textsuperscript{167} Locating permanent housing can take six months or more, however.\textsuperscript{168} Due to the shortage of alternative housing, women who would otherwise reside apart from an abusive partner often are unable to do so.\textsuperscript{169}

Even fewer options are available for men, transgendered persons,\textsuperscript{170} persons with disabilities, and women who have limited English proficiency.\textsuperscript{171} Shelters are not always able to accommodate dietary, religious or cultural differences.\textsuperscript{172} Restrictions as to the number and ages of children also serve as a barrier to shelter entry for women with large families.\textsuperscript{173} Women who suffer from mental illness and substance abuse are

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\item C\textsuperscript{\textsuperscript{163}}\textsuperscript{\textsuperscript{152}} CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, supra note 152, at 29.
\item C\textsuperscript{\textsuperscript{163}}\textsuperscript{\textsuperscript{152}} Id. at 20.
\item C\textsuperscript{\textsuperscript{163}}\textsuperscript{\textsuperscript{152}} Id. at 29.
\item C\textsuperscript{\textsuperscript{163}}\textsuperscript{\textsuperscript{152}} Id. at 20.
\item C\textsuperscript{\textsuperscript{163}}\textsuperscript{\textsuperscript{152}} Id. at 20.
\item C\textsuperscript{\textsuperscript{163}}\textsuperscript{\textsuperscript{152}} Ashley Lowe & Sarah R. Prout, Economic Justice in Domestic Violence Litigation, MICH. B.J., Sept. 2011, at 32, 33. The average stay is 60 days in an emergency homeless shelter. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, supra note 152, at 20.
\item C\textsuperscript{\textsuperscript{163}}\textsuperscript{\textsuperscript{152}} CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, supra note 152, at 20; Lowe & Prout, supra note 167, at 33.
\item C\textsuperscript{\textsuperscript{163}}\textsuperscript{\textsuperscript{152}} CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, supra note 152, at 20; Lowe & Prout, supra note 167, at 33.
\item Goodmark, supra note 4.
\item Jessica H. Stein, Coalition, Cross-Cultural Lawyering, and Intersectionality: Immigrant Identity As A Barrier to Effective Legal Counseling for Domestic Violence Victims, 11 CONN. PUB. INT. L.J. 133, 154 (2011) ("Issues with shelter, language, and food, for instance, cause victims to return to their abusers even if they were able to leave initially"); Hernandez-Truyol, supra note 141, at 385 (describing English-only policies because there was no Spanish speaking staff as a barrier to Latinas).
\item See, e.g., Nooria Faizi, Domestic Violence in the Muslim Community, 10 TEX. J. WOMEN & L. 209, 219 (2001) (explaining that Muslim women do not feel comfortable in “western” shelters because of the cultural, religious and dietary differences); Felicia E. Franco, Unconditional Safety for Conditional Immigrant Women, 11 BERKELEY WOMEN’S L.J. 99, 125-26 (1996) (explaining the impact of cultural and religious differences on Asian and Latina immigrants); Sharon Stapel, Falling to Pieces: New York State Civil Legal Remedies Available to Lesbian, Gay, Bisexual, and Transgender Survivors of Domestic Violence, 52 N.Y.L. SCH. L. REV. 247, 244 (2008) (explaining that domestic violence shelters “often do not provide appropriate services for LGBT survivors”); Stein, supra note 172, at 154.
\item Id. (identifying such policies as barriers to Latinas who may have large families).
\end{enumerate}
\end{footnotesize}
often screened out at a shelter’s intake as well.\textsuperscript{174}

Another shortcoming to relying on shelters as a new home for women subjected to abuse is that women find shelters increasingly inhospitable, and even hostile, environments. Initially, shelters operated on empowerment-oriented, feminist models.\textsuperscript{175} For instance, shelters recognized domestic violence as systemic in nature, and expressly provided domestic violence services within a larger context of gender oppression.\textsuperscript{176} As government funding became available for shelters, however, funding requirements led shelters to approach domestic violence as an individualized problem, rather than a manifestation of shared, societal concerns. Today, shelters increasingly focus on interventions and treatments for the women staying in the shelter, such as requiring them to apply for government benefits, substance abuse and therapeutic counseling.\textsuperscript{177} As Susan Schechter points out, shelter residents are subjected to onerous bureaucratic rules.\textsuperscript{178} Shelters also sometimes impose on mothers prescribed parenting practices, and insist that women have no contact with their batterers.\textsuperscript{179} These requirements and restrictions may cause women to refrain from entering shelters or to leave shelters abruptly.

Finally, another shortcoming to creating a new home at a shelter is that the shelter stay itself does not necessarily stop the violence. One study showed that ten weeks after a shelter stay, 46\% of women continued to experience domestic violence.\textsuperscript{180}

D. Petitioner Chooses to End Violence and Stay with Respondent in Home

For the petitioner who chooses to end the violence but stay with her intimate partner in the home there are few legal remedies.

\textsuperscript{174} Mainstream Legal Responses to Domestic Violence vs. Real Needs of Diverse Communities, 29 Fordham Urb. L.J. 13, 46 (2001) ("I do not know of one domestic violence shelter in New York City that serves women who report current drug use."); Hilary Mattis, California's Survivors of Domestic Violence Employment Leave Act: The Twenty-Five Employee Minimum Is Not A Good Rule of Thumb, 50 Santa Clara L. Rev. 1319, 1326-27 (2010) ("Some domestic violence shelters also turn away particularly vulnerable women, such as homeless women and women with drug or alcohol addiction.").

\textsuperscript{175} Goodman & Epstein, supra note 17, at 93; Schechter, supra note 142, at 63.

\textsuperscript{176} Schechter, supra note 142.

\textsuperscript{177} Evan Stark, Coercive Control: How Men Entrap Women in Personal Life 76 (2007) (citing a 1993 study finding that of 379 advocacy programs, the majority "emphasized counseling, information, and referral, meeting immediate needs for clothing or shelter, helping women get protection orders, and other direct services rather than systems change, although many understood that structured change was a precondition for effective help."); Kristin Bumiller, In An Abusive State: How Neoliberalism Appropriated The Feminist Movement Against Sexual Violence (2008).

\textsuperscript{178} Goodman & Epstein, supra note 17, at 93; Schechter, supra note 142, at 63.

\textsuperscript{179} Bumiller, supra note 177, at 131 ("Social workers acquired a mandate to eradicate intimate violence through the treatment of victims rather than focusing on solutions that would require changing the behavior of perpetrators.").

\textsuperscript{180} Sullivan & Rumptz, supra note 144, at 281.
1. CPO No Further Abuse Provision

CPO laws generally permit a petitioner to seek an order enjoining the abuser from future abusive conduct without also seeking an order directing the abuser to leave the home or refrain from contact with the victim.\(^{181}\) Accordingly, in most states, civil protection order laws permit a person subjected to abuse to stay in the shared home with the abusive partner, including while continuing their relationship. In a few jurisdictions, however, the CPO law does not permit a petitioner to seek a “no abuse” order without ending her relationship with the partner who abused her.\(^{182}\)

2. Benefits for Achieving Goals

A woman subjected to abuse might choose to stay in the home and continue her relationship with the person who abused her for a wide range of reasons.\(^{183}\) Specifically, attuned to her partner’s personality and predilections, the person may believe that the violence will decrease if the relationship continues. Some studies show that this does happen.\(^{184}\) The emotional connection she feels to her intimate partner may be strong, despite the abuse,\(^{185}\) or she may want the family to stay united in one home if there are children.\(^{186}\) She may be concerned about her financial viability or the loss of community ties if she separates.\(^{187}\) Moreover, the person may be concerned that violence will increase if she ends the relationship, leaves the home, or forces the abusive partner to do so.\(^{188}\) Similarly, she may be choosing to avoid future psychological harm that would result from separation violence.\(^{189}\) Finally, as discussed above, women can be empowered by tailoring a remedy to their own, individual situation.\(^{190}\)

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\(^{181}\) MD. CODE ANN., Fam. Law § 4-506 (West 2012).


\(^{183}\) Id. at 1520-21.

\(^{184}\) GOODMAN & EPSTEIN, supra note 17, at 98 (some studies show that safety can increase while continuing the relationship with person who had committed the abuse in the past).

\(^{185}\) GOODMAN, supra note 16 (2012) (discussing love); Stoever, supra note 16, at 331-32.


\(^{187}\) Id.

\(^{188}\) Stoever, supra note 16, at 332.

\(^{189}\) Id. (discussing that women who are abused may be staying in relationships that have been abusive in order to avoid “future threats of violence, as well as the psychological consequences of trauma, which include post-traumatic stress symptoms such as hyper-vigilance and anxiety-producing flashbacks of the violence”) (citing SONDRA BURMAN, COGNITIVE PROBLEM-SOLVING THERAPY AND STAGES OF CHANGE THAT FACILITATE AND SUSTAIN BATTERED WOMEN’S LEAVING, IN BATTERED WOMEN AND THEIR FAMILIES 33, 44 (Albert R. Roberts ed., 3d ed. 2007)).

\(^{190}\) Johnson, supra note 20, at 571.
3. Shortcomings for Achieving Goals

As discussed above, there is only one law that permits women to remain in a shared home with the abusive partner while ending the violence. This “no further abuse” provision of CPO laws does not, however, comprehensively address the needs presented by the situation. For example, these CPO laws do not direct provision of financial assistance to maintain the home or address the woman’s economic or isolation situation, if present. And while no crime victims’ compensation law explicitly provides for rental or mortgage assistance for a victim who does not relocate, one jurisdiction, West Virginia, explicitly discourages payment of any monies that would benefit a respondent if the victim continues to live with the respondent.\(^{191}\) CPO laws do not also contain provisions that address a woman’s agency while in the home – such as explicitly protecting or supporting a woman’s agency to maintain relationships with family and friends as well as to maintain or seek employment.

The effectiveness of laws that permit women to remain in a shared home with an abusive partner is hamstrung by the ambivalence of system actors about the appropriateness of this remedy. Such ambivalence undermines the dignity of women subjected to abuse as well as men who have perpetrated abuse. As noted earlier, civil and criminal justice system responses to domestic violence are premised on physical separation as the key to safety. Thus, lawyers, judges, courtroom clerks, and advocates may not inform women that this option is available, or may discourage the choice\(^{192}\) by berating or verbalizing frustration with a woman’s choice to stay with her partner who had abused her.\(^ {193}\) Judges sometimes disbelieve women who testify that they were abused and who also seek to stay in a shared home with the abuser, finding the desire to stay impossibly irreconcilable with the experience of abuse.\(^ {194}\) As a result, persons subjected to abuse may not actually be able to actualize their choice – or may be reluctant to exercise it. Such undermining of agency and dignity can actually increase women’s risk of future violence.\(^ {195}\)

\(^{191}\) W. Va. Code Ann. § 14-2A-1 (West) (“The extent to which a payment to a victim will support the offender by paying for the offender’s living expenses, including food, shelter, clothing, or entertainment, or the extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members, so as to avoid unjust enrichment of the offender.”).

\(^{192}\) Goodman & Epstein, supra note 17, at 98.

\(^{193}\) Stoever, supra note 16, at 336-41.

\(^{194}\) Id. at 336.

\(^{195}\) See Gist, supra note 14.
III. PROPOSAL: A HOME WITH DIGNITY WHEN THERE IS DOMESTIC VIOLENCE

As discussed above in Part II, obstacles in the current legal landscape to owning or maintaining a home for women subjected to abuse and men who abuse may increase domestic violence. These obstacles are rooted in the current legal system’s narrow goals and exist in the current laws and funding.

A. Current Obstacles

First, an important obstacle to owning and maintaining a home and ending domestic violence is the fact that the connection between home control and ending domestic violence is underdeveloped. This obstacle is explained in part by Lorna Fox’s theory of the invisibility of women as single home owners and occupiers. As a result, women subjected to abuse have a limited ability to maintain their home or obtain a new home without being a spouse or having children with her abuser. Even so, this obstacle exists and results in part from the low court rate of issuing vacate orders against respondents, regardless of respondents’ ownership interests in the home. This obstacle also results from the limited number of jurisdictions that offer exclusion and stay away from the home orders against respondent while also granting petitioner exclusive possession. This obstacle also results from the fact that few jurisdictions provide lock change rights, eviction defense protection, CPO alternative housing options, financial assistance for housing, and anti-discrimination laws. This obstacle can undermine petitioners’ dignity, such as their personal development, expression of their individuality, their bodily health and integrity, their emotions, their affiliation with others and their control over their environment. The obstacle in maintaining their home or obtaining a new home also thwarts women’s agency, further increasing their risk of violence.

Second, another obstacle to women owning and maintaining a home and ending domestic violence is found in the many laws that promote separation as the only option to ending domestic violence. This obstacle is often grounded in a belief that violence is short-term and can be stopped by physical barriers. This obstacle is also often bounded in a black and white view of domestic violence - that it is either egregious or not present and that a person subjected to domestic violence is either a victim and lacks agency or is a survivor and demonstrates her agency by leaving. The laws that promote separation rarely permit a woman subjected to abuse to choose to

196 See supra text accompanying note 1.
stay in the relationship and home but end the violence. As a result, the laws often undercut both parties’ dignity by failing to respect their intimate associations and a woman’s choice to control her environment.

Third, another obstacle to ending domestic violence is that in pursing separation of the parties, many jurisdictions vacate respondents from their solely-owned homes without consideration of their attachment to the property or their alternative living arrangements. Moreover, there is no system in place to provide alternative homes for men who are abusive, such as shelters. As a result, the law does not support respondents’ dignity as it does not consider respondents’ home and how it interplays with respondents’ development and expression of their individuality, their affiliation with their neighbors and community members, and their control over their environment. Most vacate remedies do not require more proof than the abuse committed by respondent against an intimate partner in order to exclude him from the home. As a result, the law does not provide respondents a voice in the vacate process and respondents may view this as unfair. Such unfairness can also result in diminished compliance with protective orders and increased violence.

What we see from the above discussion of three predominate obstacles is that the home is critical, the choice of which home is critical, and the support for the home is critical for dignity and overcoming the obstacles to ending domestic violence. Therefore, I propose that our legal system reconceive how best to create or maintain a home for both parties. The legal system response to domestic violence could eradicate many of these obstacles if it were guided by the value of supporting dignity, which is integrally connected to having a home and ending domestic violence.

**B. Feminist Domestic Violence Movement Should Focus More on Dignity and Greater Home Access**

The feminist domestic violence movement could play an important role in transforming the current legal system response to domestic violence, which is focused on a narrow concept of safety premised on physical separation in the home. The movement could work towards domestic violence laws, policy, and funding decisions reflecting a broader, comprehensive focus on dignity. Focusing on the value of dignity could invigorate the concept of home and promote the goal of ending domestic violence, rather than merely containing or responding to its outbreaks of violence. As discussed earlier in this Article, supporting dignity includes supporting such human capacities as life; bodily health; bodily integrity;
senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one’s environment.\textsuperscript{197}

The first obstacle to the legal system ending domestic violence identified above is that the legal system misunderstands the connection between home control and ending domestic violence. For example, for women to maintain their home or obtain a new home is critical to ending domestic violence as seen in the case study of low-income Puerto Rican women.\textsuperscript{198} This is true even if the women choose to stay in their relationships.\textsuperscript{199} Susan Schechter aptly identified the need for an expanded focus for the feminist domestic violence movement to focus beyond domestic violence as individual problems rather than collective ones and to connect battering to “the larger struggle to free women from oppression . . . [and to] other political struggles.”\textsuperscript{200} This expanded focus could include added support for the dignity of women subjected to abuse. Accordingly, the movement could highlight the importance of supporting women’s dignity by expanding to more jurisdictions helpful laws (such as vacate laws with exclusive possession to petitioner) and to ensure that the law on the books (such as the CPO vacate law) is actually effectuated in reality.

The second obstacle discussed above is the legal system’s heavy focus on separation and short-term options for women subjected to abuse. With a renewed focus on the dignity, the feminist community could explore the importance of the woman’s connection to and relationship with her partner and her community and its ability to support her, and thereby enrich the personhood stake in her home. If dignity were the overriding value in domestic violence law and policy, resources could be redistributed to provide more funding for shelters, transitional housing and alternative housing promoting a stable home to balance out the heavy emphasis and funding of the criminal justice system responses to domestic violence. The enlarged focus would create a more nuanced meaning of safety, so that separation and sole possession of the home would not be the only ways to end domestic violence, and indeed could be recognized as threatening safety in some circumstances. Focusing on dignity could help ensure that shelter housing is not the end of the process for finding a home, and instead expand the options for long-term home options as well. And focusing on dignity would recognize and support the woman’s rationality, practical decision making, emotions and intimate associations, including decisions to stay in the relationship and shared home and attempt to end the violence.

The third obstacle discussed above is that the legal system unfairly undermines the dignity of men who abuse women. Rather than exploring

\textsuperscript{197} See supra text accompanying note 28.
\textsuperscript{198} See supra text accompanying note 62.
\textsuperscript{199} Id.
\textsuperscript{200} SCHECHTER, supra note 142, at 252.
how best to allocate the home when there is domestic violence, the vast majority of jurisdictions vacate respondent regardless of his sole-ownership of his home and without any inquiry into his attachment to the home or his alternative housing options. Once found to have committed abuse, most CPO laws permit a vacate order without further proof. As a result, respondent is denied a voice in the process of determining who shall have access to which home. If the feminist domestic violence movement could focus more on dignity – including the dignity of men who abuse – there could be a focus on giving voice to the men. The focus on dignity will further the goal of ending domestic violence. Under the theory of procedural justice, if the legal system provides an opportunity for each party to voice their concerns about an issue, there will be greater compliance with the final order. In addition, given the concerns courts have made regarding the lack of a voice for respondents, if there is a chance for respondents to voice their attachment to and need for a home, perhaps more courts will vacate respondents when necessary because the courts will feel the system is fairer.

C. Focused on Dignity, the Domestic Violence Movement Could Argue for Greater Legal Change

With a greater focus on dignity, the feminist domestic violence movement could argue for greater legal change to address the home when there is domestic violence. As discussed above, our current legal system does not adequately address both parties’ need for a home when there is domestic violence. As a result, the goal of ending domestic violence and each party’s dignity are undermined. Focusing on dignity, and the connection between supporting human being’s capabilities, advocates can argue for new laws that could address the right to a home when there is domestic violence. Below are two ideas for legal change to tackle the obstacles addressed in this article.

1. Expand Criteria for Home Possession Based on Goals of Ending Domestic Violence, Supporting Dignity, and Affirming the Importance of Home

One legislative proposal could be expanding the criteria for determining home possession. For CPO vacate laws, rather than considering simply whether the petitioner or respondent should remain in the home based on whether or not there was abuse, the law should use a series of factors that would honor all of the competing values, such as fairness, property interests, economic resources, community connection,
ending domestic violence, and the benefits of home. In allocating property rights to shared homes, courts should weigh the petitioner’s interest in ending domestic violence, the court’s finding that respondent committed abuse against petitioner, the woman’s agency, the property interests in the home held by each party, each party’s personhood interest in the home, and each party’s connection to and reliance upon the community in which the home is located. In addition, the court could be ordered to consider the family relationships that exist between the petitioner and respondent, as well as whether there are any minor children. Finally, the court should consider the economic resources held by each party, the access to alternative housing for each party, and the duration of the order that would exclude the party from the home. The vacate provisions themselves should list all of these factors to be weighed, and identify the guiding values of ending domestic violence, supporting dignity, and affirming the importance of home.

Although four jurisdictions currently have a factor analysis built into their property-allocation provision, the factors are more limited than those proposed here. In addition, the jurisdictions do not provide any guidance for why the criteria were selected or how to weigh the factors. A textured analysis of these factors may avoid court decisions, for example, that attempt to overcome the fairness concern raised by vacating a respondent from solely-owned property by weighing respondent’s property interests more heavily than deserved given the respondent’s connection to the property.

2. Increase the Number of Home Options Based on Goals of Ending Domestic Violence, Supporting Dignity, and Affirming the Importance of Home

Another legislative proposal consistent with a focus on dignity is increasing the number of home options. For instance, vacate laws should focus not only on which party will have exclusive or shared possessory rights to the home, but also should ensure that such decisions result in a suitable and stable home for each party. Neither party should become homeless, lose contact with her or his personhood property, or become

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201 Ariz. R. Protective Order Proc. R. 6 C.5.b; 750 ILCS 60/214 (b) (Ill.); Md. Code Ann., Fam. Law § 4-506(h); and NDCC, 14-07.1-08 (N.D.). Under Md. Code Ann., Fam. Law § 4-506(h) (2012), the factors are: “(1) the housing needs of any minor child living in the home; (2) the duration of the relationship between the respondent and any person eligible for relief; (3) title to the home; (4) pendency and type of criminal charges against the respondent; (5) the history and severity of abuse in the relationship between the respondent and any person eligible for relief; (6) the existence of alternative housing for the respondent and any person eligible for relief; and (7) the financial resources of the respondent and the person eligible for relief.”

202 Ariz. R. Protective Order Proc. R. 6 C.5.b; 750 ILCS 60/214 (b) (Ill.); Md. Code Ann., Fam. Law § 4-506(h); and NDCC, 14-07.1-08 (N.D.).
dislocated from her or his community. For instance, if respondent is able to maintain exclusive possession of the shared residence after the CPO, the vacate laws should provide a mechanism for petitioner to obtain funds from respondent (if available) for alternative housing as a petitioner may do in New Jersey and West Virginia or she should be provided an alternative home, if the respondent can provide one, as is permitted in ten jurisdictions. Similarly, if petitioner is granted exclusive possessory rights over the home, the vacate laws should provide a remedy of obtaining funds from the respondent to assist petitioner in necessary household expenses, such as the rent, mortgage, utilities and real estate taxes, if he is able to afford it. In addition, all jurisdictions should have early lease termination laws and anti-discrimination laws for domestic violence victims to make finding a new home for the person subjected to abuse a real option.

In addition, private and public support for shelters and low-barrier housing should be increased for persons subjected to abuse to ensure that there are housing options beyond the shared home that would not only support the agency, dignity and safety of the petitioner but the respondent (by staying in the shared residence) as well. For example, the Alaska public housing agency recently began a new program that provides displaced victims of domestic violence with thirty-six months of rental assistance.\textsuperscript{203} In addition, there have been recent strides in lowering barriers to shelters and transitional housing,\textsuperscript{204} and these improvements should continue to make this housing more accessible and livable for persons subjected to abuse in a way that permits them to be connected to the community and even their partner if they so wish. Increased housing options also could preclude both parties from becoming homeless as a result of the domestic violence.

\textbf{CONCLUSION}

In sum, the legal system does not appropriately address all of the issues that are critical to supporting each party’s need for a home. As a result of this deficit, domestic violence may be exacerbated, the parties may become homeless, and the parties’ dignity is diminished. This problem results from the legal system’s limited goals for the system – achieving a narrow view of short-term safety premised on physical separation in the home. I argue for creating a comprehensive theory that addresses the rights to a home when

\textsuperscript{203} \textsc{Alaska Housing Finance Corporation, Memorandum of Understanding} (2012), available at \url{http://www.ahfc.us/iceimages/rental/empowering_choice_housing_mou.pdf}.

\textsuperscript{204} \textsc{District Alliance For Safe Housing, supra note 52}. 
there is domestic violence by focusing on each party’s dignity, the importance of home and ending domestic violence. My proposal for supporting the dignity of each party in these situations is to have the feminist domestic violence movement focus more on dignity and greater access to a home. The goal of this focus would be to advocate for system change and new and expanded laws. Legislative changes could including creating factors to guide the vacate decision and to increase the number of housing options for both women subjected to abuse and men who perpetrate abuse.