

# The Feminist Case for Acknowledging Women's Acts of Violence

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**ABSTRACT:** This Article makes a feminist case for acknowledging women's acts of violence as consistent with—not threatening to—the goals of the domestic violence movement and the feminist movement. It concludes that broadly understanding women's use of strength, power, coercion, control, and violence, even illegitimate uses, can be framed consistent with feminist goals. Beginning this conversation is a necessary—if uncomfortable—step to give movement to the movement to end gendered violence.

The domestic violence movement historically framed its work on a gender binary of men as potential perpetrators and women as potential victims. This binary was an essential starting point to defining and responding to domestic violence. The movement has since struggled to address women as perpetrators. It has historically deployed a “strategy of containment” to respond to women as perpetrators. This strategy includes bringing male victims of domestic violence within existing services, monitoring exaggerations and misstatements about the extent of women's violence, and noting the troublesome line between perpetrator/victim for women. This strategy achieved specific and important goals to domestic violence law reforms. These goals included retaining domestic violence's central and iconic framing as a women's issue, preserving critical funding sources and infrastructure to serve victims, and thwarting obstructionist political challenges largely waged by men's rights groups.

While acknowledging that these goals were sound and central to the historic underpinnings of domestic violence law reforms, this Article considers whether the strategy of containment is too myopic and reactive to endure. It

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begins a discussion of whether moving beyond a strategy of containment might paradoxically advance the efficacy of both domestic violence law reforms and the feminist movement. It suggests that moving beyond the strategy of containment would strengthen the infrastructure and foundation of the domestic violence movement. It would move beyond the limited masculinist frame dominating domestic violence, beyond the pathologized and marginalized frame depicting women abusers, and toward a more inclusive movement. It further examines potential gains to the broader feminist movement, such as preserving the movement's sustained legacy, diffusing gender stereotypes, righting skewed legal standards, and advancing women's political and professional status.

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## INTRODUCTION

Acknowledging women's acts of violence may be a necessary—if uncomfortable—step to make dynamic the movement to *end* gendered violence. The domestic violence movement secured iconic legal, social, and political reforms when it successfully named domestic violence and developed responses to it, such as shelters and legal protections. This transformative movement was accurately and squarely framed as a movement primarily to protect women from male intimate partner violence. This gender binary prompted some backlash and policy battles regarding the frequency of female violence of intimate partners. Over time the movement has expanded to accept male victims within its infrastructure, but it has not soundly brought female perpetrators in its frame.

This paper describes this limited response to women as perpetrators of domestic violence as a feminist “strategy of containment.” When deploying this strategy, domestic violence advocates respond to women's acts of domestic violence by accepting male victims within its existing infrastructure, monitoring vigilantly for statistical exaggerations, and preserving the dominant framing of domestic violence as a gendered issue.<sup>1</sup> This strategy thus positions women's acts of violence as a footnote to the larger story of women as victims of male violence.<sup>2</sup>

There have admittedly been sound reasons to pursue this strategy of containment historically. It was important to understand domestic violence as a gendered issue deeply connected to patriarchal systems of subordination by men and by the state. It was important to preserve the longstanding successes of the domestic violence movement providing valuable services in communities nationwide. It was important to navigate men's rights backlashes and distortions carefully and vigilantly. Part I below defines the strategy of containment and the sound reasons for its deployment.

Even acknowledging sound historic explanations for the strategy, this Article concludes that it is time to revisit this strategy to consider holistically the benefits of moving beyond containment. It is time to consider as a movement whether women's violence is really a danger or threat to the movement's successes so as to warrant a “third rail” treatment.<sup>3</sup> An expanded modern dialogue will ensure that the strategy of containment is not too myopic, defensive, or outdated.

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1. Notably, even this framing of domestic violence as a “women's issue,” gives primary emphasis to women's victimization and secondary emphasis to male violence.

2. This is a framing which implicitly excludes women as victims of women's abuse, men as victims of women's abuse, or men as victims of men's abuse as discussed *infra* Section II.A.

3. The term “third rail” refers to a method of providing direct electricity to trains. The “third rail” presents grave risks of harm to anyone who comes in contact with the rail in isolation, but is also the powering mechanism to the train's movement.

Initial responses to this Article's thesis might range from an apathetic "who cares?" to an emphatic "be careful!" Some might say that this thesis misses the goal of the domestic violence movement—to serve and support *survivors*, not to expend valuable resources and services on perpetrators. Others, while acknowledging that women do commit some acts of domestic violence,<sup>4</sup> might argue that it is too risky to the success of the domestic violence movement, particularly in a time of budgetary cuts,<sup>5</sup> and relentless attacks by "men's rights" groups and political opponents.<sup>6</sup>

Part II begins to make a feminist case for acknowledging women's acts of violence consistent with feminist goals. It begins the conversation examining how moving beyond the strategy of containment can propel greater efficacy in the feminist and domestic violence social movements. Section II.A first considers the ways in which understanding and acknowledging women's acts of violence might actually advance the domestic violence movement by strengthening its foundation and infrastructure in a modern gender frame. This includes understanding and acknowledging how women's acts of violence might paradoxically propel the efficacy of the domestic violence movement forward. It might confront the masculinist frames that still dominate domestic violence policy, directly challenge the pathologizing and marginalizing of women's violence, and promote a more inclusive social movement. Part II then expands in Section B to consider how the process of understanding and acknowledging women's acts of violence consistent with feminist goals might paradoxically preserve and ensure—not threaten—the feminist movement's longevity and enduring relevance. It considers how other skewed legal standards might be corrected, stereotypes might be diffused, and women's overall political, professional, legal, and social status might be advanced.

## I. THE FEMINIST STRATEGY OF CONTAINMENT HAS SERVED IMPORTANT PURPOSES

The domestic violence movement is an iconic and central component of the larger feminist social movement.<sup>7</sup> The domestic violence movement emerged in

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4. See *infra* Section I.B.1 (analyzing the frequency of women as perpetrators of domestic violence and describing historic tensions compiling these data).

5. See, e.g., A.G. Sulzberger, *Facing Cuts, a City Repeals its Domestic Violence Law*, N.Y. TIMES (Oct. 11, 2011), <http://www.nytimes.com/2011/10/12/us/topeka-moves-to-decriminalize-domestic-violence.html> (describing a Topeka cost-saving measure repealing a local law criminalizing domestic violence).

6. See, e.g., *Reports*, SAVE SERVS., <http://www.saveservices.org/reports> (describing domestic violence legal services as weakening due process and working for law reform to "protect all victims and stop false allegations").

7. Lisa Goodman & Deborah Epstein, *Refocusing on Women: A New Direction for Policy and Research on Intimate Partner Violence*, 20 J. INTERPERSONAL VIOLENCE 479, 480 (2005) ("As the battered women's movement took shape in the late 1960s and early 1970s, activists were philosophically aligned with the broader feminist movement.").

the 1960s and 1970s in the context of civil rights and antiwar movements.<sup>8</sup> The movement analyzed violence against women through a feminist lens “as a political and social, as well as personal, phenomenon.”<sup>9</sup> It made visible and defined domestic violence as a pattern of behavior that includes the use or threat of violence and intimidation for the purpose of gaining power and control over another person.<sup>10</sup> It was not limited to physical violence; it included a pattern of coercive control that might be psychological, economic, or sexual in nature.<sup>11</sup>

The domestic violence movement’s critical move was positioning abuse within a gendered context.<sup>12</sup> The “cornerstone of scholarship and activism” as well as the “basis for law enforcement policies” was built upon a gender binary.<sup>13</sup> This gendered framing formed the foundation for the movement’s larger successes in cultivating a source of support, empowerment, and autonomy for women. It reframed state accountability and political discourse.<sup>14</sup> Domestic violence advocates constructed an expansive shelter and victims-service model nationwide to provide safety for women victims of male violence.<sup>15</sup> These services have provided a critical refuge and source of support for survivors of abuse worldwide.

A growing number of researchers and activists began in 1975 to argue that women abused in numbers equal to men,<sup>16</sup> a concept known as “gender

8. Amy Lehmer & Nicole E. Allen, *Still a Movement After All These Years? Current Tensions in the Domestic Violence Movement*, 15 VIOLENCE AGAINST WOMEN 656, 656 (2009).

9. *Id.* at 657.

10. See *What Is Domestic Violence?*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <http://www.ncadv.org/need-help/what-is-domestic-violence>.

11. Lois Schwaebler, *Recognizing Domestic Violence: How to Know It When You See It and How to Provide Appropriate Representation*, in DOMESTIC VIOLENCE, ABUSE, AND CHILD CUSTODY: LEGAL STRATEGIES AND POLICY ISSUES, at 2-3 (Mo Therese Hannah & Barry Goldstein eds., 2010).

12. See Elizabeth Schneider, *Domestic Violence Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L.Q. 353, 359 (2008). The domestic violence movement sought to make the state accountable to respond to masculine violence. See SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE 11 (1982) (“Since 1975, the ongoing struggle of the battered women’s movement has been to name the hidden and private violence in women’s lives, declare it public, and provide safe havens and support.”). The domestic violence movement was founded on the key assumption that “individual instances of violence against women were symptomatic of a singular structure of gender-based oppression.” Priya Kandaswamy, “*You Trade in a Man for the Man*”: *Domestic Violence and the U.S. Welfare State*, AM. Q. 253, 258 (2010).

13. Hadar Aviram & Annick Persinger, *Perceiving and Reporting Domestic Violence Incidents in Unconventional Settings: A Vignette Survey Study*, 23 HASTINGS WOMEN’S L.J. 159, 159 (2012).

14. G. Kristian Miccio, *A Reasonable Battered Mother? Redefining, Reconstructing, and Recreating the Battered Mother in Child Protective Proceedings*, 22 HARV. WOMEN’S L.J. 89, 90 (1999).

15. Lehmer & Allen, *supra* note 8, at 657.

16. See Cathy Young, *The Surprising Truth About Women and Violence*, TIME (June 25, 2014), <http://time.com/2921491/hope-solo-women-violence/> (summarizing the research of Murray Straus and Richard Gelles of the Family Research Laboratory, which controversially concluded that women were just as likely as men to report initiating intimate partner violence and that women’s motives—like men’s—were about anger and control).

symmetry.”<sup>17</sup> Gender symmetry has been largely debunked in policy and advocacy circles<sup>18</sup> by comparing more appropriate quantitative data samples.<sup>19</sup> The policy debate has also led to stronger qualitative distinctions in how and why women use violence compared to men.<sup>20</sup>

It cannot be ignored that the larger domestic violence movement still struggles with these backlashes.<sup>21</sup> The debate still festers and distracts.<sup>22</sup> This has left the domestic violence movement responding to women’s acts of violence in ways that can be perceived as problematically defensive. A recent *Time Magazine* article about women and violence, for example, explained that responses to women’s violence “range from dismissal to outright hostility.”<sup>23</sup>

The next Section describes how and why modern advocates respond to women as perpetrators of domestic violence in this way. It first defines the “strategy of containment”; it then recognizes that many sound reasons supported this strategy historically.

17. See Michael S. Kimmel, “*Gender Symmetry*” in *Domestic Violence*, 8 VIOLENCE AGAINST WOMEN 1332, 1333 (2002) (noting that at the time of the article there were more than 100 studies purporting to prove this).

18. See Schwaebler, *supra* note 11, at 2-12 (concluding that this research “is flawed”).

19. See Susan L. Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 VIOLENCE AGAINST WOMEN 1339, 1344-45 (2001).

20. See, e.g., MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE 3-4 (2008) (“We have been trapped in overgeneralizations that assume that intimate partner violence is a unitary phenomenon. . . . But we have enough of a start in this process to know that it is time to stop talking about domestic violence as if it were a unitary phenomenon and start talking about what we know about the different types of violence in intimate relationships.”).

Women who commit violence against their partners are often victims of domestic violence themselves, and are frequently acting either in self-defense or retaliation to a long history of victimization and often do not initiate or control the violence. Miller, *supra* note 19, at 1339-45. Even when women “hit first,” Miller asserts that it is strategic and preemptive violence aimed at preventing a perceived threat. *Id.* at 1345. However, Miller acknowledges that not all women are without culpability. *Id.* at 1348. Miller hypothesizes that one possible explanation for the increase in female arrests (in addition to mandatory arrest policies) is that more women may feel liberated, ready to shed the “good girl!” prescribed gender role and stand up for themselves. *Id.* Doing so may cause them to be labeled as “deviant and criminal,” and Miller wonders whether police and prosecutors embrace assumptions about women’s nature causing them to view women’s violence as unfeminine and thus deviant, rather than self-defensive. *Id.*

Men, on the other hand, perpetrate violence against their intimate partners in order to have control or exert domination of their partners. *Id.* at 1345-46. Due to this, Miller feels the current justice system is inappropriate in that it does not distinguish between important contextual differences in female and male perpetrators of domestic violence. *Id.* at 1346.

21. See Schneider, *supra* note 12, at 356.

22. See, e.g., Murray A. Straus, *Women’s Violence Toward Men Is a Serious Social Problem*, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE 565-77 (D.R. Loseke et al. eds., 2005) (stating that “[v]iolence by women against male partners has been a difficult and controversial issue caused by differences in research methodologies and in moral agendas”); Anna North, *Domestic Violence: Are Women as Abusive as Men?* JEZEBEL (Apr. 5, 2010), <http://jezebel.com/5509717/domestic-violence-are-women-as-abusive-as-men> (resurfacing these debates and data disputes).

23. Young, *supra* note 16.

### A. Defining the "Strategy of Containment"

The strategy of containment includes at least three characteristics: (1) bringing male victims within existing domestic violence services; (2) vigilantly monitoring the field for exaggerations and misstatements of women as perpetrators; and (3) noting the troublesome line between perpetrator/victim.<sup>24</sup>

First, when domestic violence advocates respond to women as perpetrators of violence, the dominant response is to acknowledge and accept men as victims and to provide services to them.<sup>25</sup> This occurs so frequently that it is almost automatic. Advocates speak about domestic violence and promptly note that they will describe the violence in gendered terms with women as victims and men as perpetrators. They hastily, yet sincerely, acknowledge that men are also victims.<sup>26</sup> They rarely say anything about the possibility of women as abusers. This strategy is noteworthy because it grants male victims access to much-needed services, but it does not acknowledge the full diversity of women's experiences. If the offender is a male, it presumes that the existing approaches will be adequate for male-male partner violence. If the offender is female, her identity is lost (silenced) entirely.<sup>27</sup>

Second, domestic violence advocates have vigilantly and necessarily monitored the field for exaggerations about the extent of women's violence. This reflects a statistical strategy of containment. It relates to the first strategy closely. The goal of this component is to avoid others over-stating or over-normalizing women as perpetrators of domestic violence. As this component of

24. These characteristics are often interwoven together. For example, characteristic (1) is often abruptly followed by (2), and (2) is tempered by (3).

25. See, e.g., Polly Neate & Glen Poole, *Should Domestic Violence Services Be Gender Neutral?*, *GUARDIAN* (Aug. 5, 2014), <http://www.theguardian.com/commentisfree/2014/aug/05/domestic-violence-services-gender-neutral>. For example, one domestic violence advocate's defense of primarily providing services for women was structured as follows: (1) Accept that men experience domestic abuse, but (2) explain that the vast majority of abuse is experienced by women, and (3) commit to serving men without compromising women's needs or safety. Critically, to deny men services would violate the Equal Protection Clause. See *Woods v. Horton*, 84 Cal. Rptr. 3d. 332, 348 (Ct. App. 2008); Molly Dragiewicz & Yvonne Lindgren, *The Gendered Nature of Domestic Violence: Statistical Data for Lawyers Considering Equal Protection Analysis*, 17 AM. U. J. GENDER SOC. POL'Y & L. 229, 233 (2009) (concluding that "[f]ailure to recognize the causal link between domestic violence and gender threatens to severely undermine formal equality because it fails to address the underlying problems that allow domestic violence to persist and does not address the victims' experience within the context of societal discrimination").

26. See, e.g., Emily Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1658, 1708 ("This does not mean that men who are victims of domestic violence do not exist, or that they should not be provided services and recognized as part of the domestic violence problem. There is no doubt that this is a population that needs more attention by those working in the domestic violence community. However, it does mean that the focus on resources and services for battered women is not misplaced.").

27. See generally Abbe Smith, *The "Monster" in All of Us: When Victims Become Perpetrators*, 38 SUFFOLK U. L. REV. 367, 383 (2005) (concluding that feminist and victims' rights movements have often "turned their back on women who are both victims and perpetrators"). "[F]eminists and others who claim to care about raped and abused women suddenly jump ship and head for the hills the minute a raped and abused woman becomes a perpetrator." *Id.* at 386.

the strategy goes, part of the reason that we can footnote women as abusive is because they comprise such a statistically small sample of women. This component is particularly noteworthy because while the general trajectory of domestic violence services has moved toward responding to and serving defendants, women perpetrators are not getting the same attention in the criminal justice system.<sup>28</sup>

Third, feminists have cautioned regarding the troublesome line between perpetrator and victim to nuance women's acts of domestic violence. This might include victims of *prior* victimization and abuse of any kind becoming subsequent domestic violence perpetrators.<sup>29</sup> For example, Abbe Smith's *The "Monster" in All of Us: When Victims Become Perpetrators* described powerfully the ways in which victims of violence and abuse can themselves become perpetrators of violent acts.<sup>30</sup> Female prisoners have a high propensity of having experienced violence before prison. About 85-90% of female prisoners report being a victim of violence—sexual and physical—before incarceration.<sup>31</sup> It might also include victims who were wrongly arrested as perpetrators when they were not the primary aggressor.<sup>32</sup> Or it might include women who were arrested under problematic "failure to protect" laws, which disproportionately hold women accountable for "harms they have neither created nor perpetrated."<sup>33</sup>

A clear example of this component of the "strategy of containment" can be seen in Kentucky's codified program requirements governing Batterer's Intervention Programs ("BIPs"). If the provider treats women perpetrators, then

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28. See Goodman & Epstein, *supra* note 7, at 480 (noting that this is further "compounded by researchers' emphasis on evaluating batterer treatment over victim advocacy programs"). Many state responses have shifted "toward a largely perpetrator-centered, generic response" due to the "traditional emphasis of police and prosecutors on offender accountability over victim safety and security." *Id.*

29. See, e.g., Miller, *supra* note 19, at 1339-45. Women who commit violence against their partners are often victims of domestic violence themselves, and are acting either in self-defense or retaliation to a long-history of victimization and often do not initiate or control the violence. *Id.*

30. Smith, *supra* note 27, at 383 (critiquing the lack of feminist support for victims turned perpetrators). See generally Siobhan Weare, "The Mad", "The Bad", "The Victim": *Gendered Constructions of Women Who Kill Within the Criminal Justice System*, 2 LAWS 337 (2013) (discussing and critiquing the denial of women's agency as killers).

31. Julie Ajinkya, *Rethinking How to Address the Growing Female Prison Population*, CTR. FOR AM. PROGRESS (Mar. 8, 2013), <https://www.americanprogress.org/issues/women/news/2013/03/08/55787/rethinking-how-to-address-the-growing-female-prison-population>.

32. Mandatory arrest policies have sharply increased the arrest rates for women. See, e.g., Poco Kernsmith & Roger Kernsmith, *Treating Female Perpetrators: State Standards for Batterer Intervention Services*, 54 SOC. WORK 341, 342 (2009) (noting that mandatory arrest policies have often led to both parties being arrested because the officers cannot determine who was the aggressor).

33. Miccio, *supra* note 14, at 91 (concluding that these statutes punish abused women and fail to protect children from abusive fathers). Failure to protect laws conclude that parents are criminally responsible for failing to protect their children from violence, even when that violence is violence against them. See, e.g., Jeanne A. Fugate, Note, *Who's Failing Who? A Critical Analysis of Failure to Protect Laws*, 76 N.Y.U. L. REV. 272 (2001) (concluding that failure to protect laws are enforced almost exclusively against women).

for those women the provider must “document factors, other than the referral source, which make a female client eligible for a program.”<sup>34</sup> No documentation is required for male eligibility. This is presumably an effort to avoid mischaracterizing female victims as perpetrators for the reasons just noted. Likewise, women’s programs only, but not male’s, include “safety planning and knowledge of domestic violence resources.”<sup>35</sup> This is a startling requirement for *perpetrators* of domestic violence, only explained by an implicit concern that the women perpetrators might be or become victims. These characteristics help define the existing strategy of containment.

### *B. Sound Historic Explanations Supported this Strategy*

Many sound reasons justified the deployment of this strategy of containment historically, as explored in this section, including the framing of domestic violence as a women’s issue, preserving existing services, and mitigating men’s rights backlashes. While these reasons are introduced here separately, they interconnect in critical ways.<sup>36</sup>

#### *1. Retaining the Central Framing of Domestic Violence as a Gendered Issue*

One explanation supporting the strategy of containment might be to retain the central framing of domestic violence as a gendered issue. Domestic violence was and is “highly gendered.”<sup>37</sup> This gendered framing has been central, iconic, and transformative to the domestic violence movement’s identity.<sup>38</sup> The gendered framing of domestic violence aligned with the work of

34. 920 KY. ADMIN. REGS. 2:020 § 10(b) (2015).

35. *Id.* at § 10(a)(2)(k).

36. For example, it is the men’s rights backlash that seeks to detach domestic violence from its gendered roots. While detaching domestic violence from a gendered frame might make more services accessible to men, the specific outcome sought by these opponents is the defunding entirely of domestic violence programs, which jeopardizes access to critical services.

37. *See, e.g.,* ROSEMARY HUNTER, *DOMESTIC VIOLENCE REFORM: WOMEN’S EXPERIENCE IN COURT* 20 (2008) (summarizing broadly understood feminist principles); Miccio, *supra* note 14, at 89-90 (“Intimate violence constructs women’s lives. It is the lens that shapes women’s images, deconstructs women’s bodies, defines women’s relationships to their selves and delimits women’s connections to their children.”).

38. *See* Julie Goldscheid, *Domestic and Sexual Violence as Sex Discrimination: Comparing American and International Approaches*, 28 T. JEFFERSON L. REV. 355, 355 (2006) (“Feminist theory’s insights into the ways in which domestic and sexual violence reflects and perpetuates sex-based inequality have been critical in advancing reform efforts both domestically and internationally. In the United States, feminist advocacy linking violence against women to women’s historic sex-based subordination has significantly transformed law reform, public education, and social services.”); *see also* Schneider, *supra* note 12, at 358 (“Given the historical context of invisibility, the move to a concept of public harm was viewed as a significant shift.”). *See generally*, Sack, *supra* note 26 (providing a thoughtful overview of the history of domestic violence reforms and the threats to the modern movement).

the feminist movement more broadly, harmoniously positioning the movements as inter-connected.

Domestic violence was specifically framed around a collective “oneness” of women as victims and men as perpetrators. The issue was framed early on as a challenge to male status as “king of his castle,” positioned with control of the women and children who were his property and who lacked legal standing. The domestic violence movement sought to make the state accountable to respond to this distinct form of male violence.<sup>39</sup>

Early advocates deployed a gender-specific frame to reveal the prevalence of male violence against women rooted in a broader understanding of men’s systemic subordination of women.<sup>40</sup> “The hope was that the express link [to women] would support advocacy, organizing, and reform that would frame the problem as a social, and political concern, and as explicitly tied to sex discrimination.”<sup>41</sup>

And women *are* the predominant victims of domestic violence. The Center for Disease Control reports that 27% of women have experienced intimate partner violence, compared to 11% of men.<sup>42</sup> The World Health Organization estimates that globally 30% of women worldwide have experienced intimate partner abuse.<sup>43</sup>

And the consequences to women victims can be far harsher than to men given larger structural inequalities. According to the Centers for Disease Control and Prevention, eight million days of paid work are lost each year due to intimate partner abuse.<sup>44</sup> Women who experience intimate partner violence are more likely to suffer health effects such as reproductive problems and psychological issues (all of which would further affect women’s work performance).<sup>45</sup> Women who are being controlled in abusive relationships are more likely to be unemployed, receiving public assistance, and suffering from health problems.<sup>46</sup>

This political, legal, and social frame of domestic violence as a gendered issue has been central to its positioning as a social movement. Social movements function in an oppositional frame to “resist or restructure existing

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39. Kandaswamy, *supra* note 12, at 259.

40. See Julie Goldscheid, *Gender-Neutrality, the “Violence Against Women” Frame, and Transformative Reform*, 82 UMKC L. REV. 623, 628-29 (2014).

41. *Id.* at 631.

42. *Intimate Partner Violence: Consequences*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 3, 2015), <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html>.

43. *Violence Against Women*, WORLD HEALTH ORG. (Nov. 2014), <http://www.who.int/mediacentre/factsheets/fs239/en>.

44. Ctrs. for Disease Control & Prevention, *Costs of Intimate Partner Violence Against Women in the United States*, DEP’T HEALTH & HUM. SERVS. 19 (Mar. 2003), <http://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf>.

45. *Intimate Partner Violence: Consequences* *supra* note 42.

46. *Id.*

systems of domination.”<sup>47</sup> Movements develop a collective identity. Collective identity is a powerful component of social movements. It “ensures the continuity and permanence of the movement over time; it establishes the limits of the actor with respect to its social environments[;] regulates the membership of individuals, and it defines the requisites for joining the movement and the criteria by which its members recognize themselves and are recognized.”<sup>48</sup>

This collective identity broadly includes aspects of the movement that outsiders can identify with, that insiders identify with, and a process by which the movement mobilizes and interacts.<sup>49</sup> Collective identity creates a “shared sense of ‘oneness’ or ‘we-ness’ anchored in real or imagined shared attributes and experiences among those who comprise the collectivity and in relation or contrast to one [or] more actual or imagined sets of others.”<sup>50</sup>

Creating boundaries frames the movement’s collective identity. By defining a “oneness” of what the movement is, social movements inherently include “boundary work” by which the movement creates a “reciprocal identification between group members that simultaneously express commonalities and difference with reference groups.”<sup>51</sup> This can create a sharp binary by which there are clear protagonists and clear antagonists.<sup>52</sup>

While the movement deploys gender-neutral language of “spouse,” “partner,” etc., the gendered frame still dominates.<sup>53</sup> Service providers still use gender as a proxy for distinguishing between victims and perpetrators, for example.<sup>54</sup> Domestic violence needs to be understood as “affecting women’s freedom, citizenship, and autonomy, and as fundamental to women’s equality.”<sup>55</sup> Hesitation festers within the movement today regarding the co-opting or diluting of the overall goals of ending violence *against women*. Advocates candidly worry that new approaches might undermine this gender frame or compromise the expertise that has been acquired.<sup>56</sup>

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47. Cristina Flesher Fominaya, *Collective Identity in Social Movements: Central Concepts and Debates*, 4 SOC. COMPASS 393, 396 (2010).

48. Alberto Melucci, *The Process of Collective Identity*, in SOCIAL MOVEMENTS AND CULTURE 41, 49 (Hank Johnston & Bert Klandermans eds., 1995).

49. Fominaya, *supra* note 47, at 394. “[A]lthough collective identities can be understood as (potentially) encompassing shared interests, ideologies, subcultures, goals, rituals, practices, values, worldview, commitment, solidarity, tactics, strategies, definitions of the ‘enemy’ or the opposition and framing of issues, it is not synonymous with and cannot be reduced to any of these things.” *Id.* at 398.

50. *Id.* at 394.

51. *Id.*

52. *Id.* at 395.

53. *But see* Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming a Domestic Sphere While Risking Negative Stereotypes*, TEMP. POL. & C.R. L. REV. 325, 333 (1999) (cautioning that “same-sex domestic violence forces a re-examination of domestic violence, which assumes a male batterer and a female victim”).

54. *See* Goldscheid, *supra* note 40, at 629-30, 645, 659.

55. ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 197 (2000).

56. Lehrner & Allen, *supra* note 8, at 671.

## 2. Preserving Existing Services

Relatedly, the strategy of containment is further explained by the important goal of preserving the successes of the domestic violence movement and retaining existing services. The domestic violence movement achieved tremendous successes, the fruits of which are critical to the safety and well being of men and women throughout the world.

What began as a grassroots movement has become a tremendous infrastructure of federal and state responses across legal, criminal, civil, mental health, and social service systems.<sup>57</sup> Today there are more than 2,000 domestic violence shelters nationwide.<sup>58</sup> There is “substantial public awareness” of domestic violence, growing understandings that it is “unacceptable,” and “increasing political will to intervene.”<sup>59</sup> Yet notably that political will is increasingly harder to harness, as evidenced by congressional battles to reauthorize the Violence Against Women Act.<sup>60</sup>

Domestic violence is also still endemic.<sup>61</sup> Services for victims are still in grave need<sup>62</sup> and under great funding threats.<sup>63</sup> A 24-hour survey of domestic

57. See Goldscheid, *supra* note 38, at 363-73 (cataloging reforms, including eliminating formal inequalities, enhancing criminal justice responses, expanding social services, and civil justice responses).

58. See JOHNSON, *supra* note 20, at 73 (stating that there are over 1800 women’s shelters in the United States).

59. Goodman & Epstein, *supra* note 7, at 480.

60. See, e.g., Louise Erdrich, *Rape on the Reservation*, N.Y. TIMES (Feb. 26, 2013), <http://www.nytimes.com/2013/02/27/opinion/native-americans-and-the-violence-against-women-act.html>. Deborah Weissman describes this occurring in the congressional efforts to reauthorize the Violence Against Women Act since its initial passage in 1994. With each subsequent authorization, the goals slip further from the underlying feminist framing. In 2000, for example the reauthorization strengthened law enforcement’s ability to prosecute crimes including legal aid reporting requirements. Deborah M. Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL’Y 221, 226-27 (2013) (explaining that this reporting was a “means to expand the capacity of the criminal justice system”). In 2005, the reauthorization bill added a DNA Fingerprint Act, which “raised concerns that poor men and especially men of color may be ‘catalogued’ for purposes of wrongful intrusion by the state.” *Id.* at 227. The 2013 reauthorization likewise emphasized police and prosecutorial power. This emphasis stands in stark contrast to more robust testimony describing domestic violence in its structural, systemic, economic and political construction.

61. The National Network to End Domestic Violence reports that more than one in three women have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime. This violence is “inextricably linked” to economic security. *Domestic and Sexual Violence Fact Sheet*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, [http://www.nnedv.org/downloads/Policy/AD14/AD14\\_DVSA\\_Factsheet.pdf](http://www.nnedv.org/downloads/Policy/AD14/AD14_DVSA_Factsheet.pdf). Many victims will struggle with food and housing insecurity. *Id.* The Centers for Disease Control reports that an estimated 5.3 million acts of intimate partner violence occur among women 18 and older each year, resulting in nearly 2 million injuries and requiring 550,000 victims to seek medical help. Victims of intimate partner violence lose a combined total of 8 million paid work days and 5.6 million days of household productivity. See Ctrs. for Disease Control & Prevention, *supra* note 44 at 1.

62. An average of three women a day are killed by their current or former partner. *Domestic and Sexual Violence Fact Sheet*, *supra* note 61.

63. See, e.g., Sulzberger, *supra* note 5 (describing a Topeka cost-saving measure repealing a local law criminalizing domestic violence). Importantly, the men’s rights groups discussed below argue that gender symmetry requires states to defund services available to victims, rather than expand services to

violence programs in 2013, for example, revealed that 66,581 adults and children received refuge from intimate violence and an additional 9,641 requests for services were unmet due to lack of resources on that one single day alone.<sup>64</sup>

The ongoing provision of services is critical. Modern services are funded by a web of state and federal laws that intersect in complex ways with the criminal justice system.<sup>65</sup> These funding mechanisms reflect the unparalleled success of the domestic violence movement because the movement has achieved “government funding, the growth of service provision, widespread collaboration, [and] inclusion in policy arenas.”<sup>66</sup> The tension as a social movement becomes how to maintain a line of funding to support existing services without upending the existing approaches that support these funding sources legally or strategically.<sup>67</sup> As one respondent to a study of advocates concluded, “as the movement has evolved, its successes have paradoxically posed new challenges for its continuing vitality as a social change movement.”<sup>68</sup> The need to maintain and grow funding sources creates pressures on the movement to not make political waves or disrupt existing funding lines of support.<sup>69</sup> Funding agencies are more likely to support direct client work and prevention work, but these agencies may not support reform or change efforts, so the movement struggles to retain its social movement status, leading to “a potential devolution of the movement into the exclusive provision of direct services.”<sup>70</sup>

Quite simply and understandably, focusing on women as perpetrators of domestic violence—many would argue—would be an unnecessary distraction and deviation that the movement cannot afford fiscally or politically.

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men. See Kelly Alison Behre, *Digging Beneath the Equality Language: The Influence of the Fathers' Rights Movement on Intimate Partner Violence Public Policy Debates and Family Law Reform*, 21 WM. & MARY J. WOMEN & L. 525, 535 (2015); see also Dragiewicz & Lindgren, *supra* note 25, at 234 (“The history of anti-feminist fathers’ rights litigation across the country on this issue points to a systematic attempt to, at the very least, divert already inadequate and scarce resources away from women’s shelters and, at worst, impede battered women’s efforts to secure safety, accurate information, and services.”).

64. *Domestic and Sexual Violence Fact Sheet*, *supra* note 61 (citing *Domestic Violence Counts 2013: A 24-Hour Census of Domestic Violence Shelters and Services*, NAT’L NETWORK TO END DOMESTIC VIOLENCE (Mar. 2014), [http://nnedv.org/downloads/Census/DVCounts2013/Census13\\_FullReport\\_forweb\\_smallestFileSizeWhiteMargins.pdf](http://nnedv.org/downloads/Census/DVCounts2013/Census13_FullReport_forweb_smallestFileSizeWhiteMargins.pdf)); see also Marisa Kwiatkowski, *Central Indiana Domestic Violence Shelters Turn Away 1,743*, INDY STAR (Nov. 12, 2015), <http://www.indystar.com/story/news/2015/11/12/central-indiana-domestic-violence-shelters-must-say-no-1743-seeking-safehaven/75515438>.

65. Lehmer & Allen, *supra* note 8, at 657 (noting the concern that these intersections “co-opt[ ]” the movement).

66. *Id.*

67. SCHECHTER, *supra* note 12, at 81-112 (describing the struggle to maintain the movement’s identity, a problem described as “growing pains” and “mixed blessings” within the movement).

68. Lehmer & Allen, *supra* note 8, at 660. For example, access to funding has led to substantial increases in services available to survivors and their families, which in turn has “result[ed] in the hiring of professional staff who are often not versed in movement philosophy or history.” *Id.* at 673.

69. *Id.* at 673.

70. *Id.*

### 3. *Mitigating Men's Rights Backlash and Distortions*

Finally, the strategy of containment is, in part, explained by reactions to backlashes and distortions of opponents such as the so-called men's rights groups and father's rights groups. With the vast successes of the domestic violence movement has come fierce backlash. While historically the oppositional binary of the social movement was men and women or women and the state,<sup>71</sup> today that binary may be framed even more myopically as "men's rights groups" actively working to de-moor domestic violence from its positioning as a gendered issue.

The most concerning of these groups are centrally focused on refuting domestic violence allegations as false and proving that women are perpetrators of domestic violence at equal rates ("symmetry"), among other goals. They wholly contest the gender-specific framing of domestic violence and the conclusion that it occurs predominantly by men against women.<sup>72</sup> At its worst, this pushback has led to some calls for a change of course in policy and spending,<sup>73</sup> at its best, this opposition has created confusion for policy makers and for the public at large in understanding domestic violence.<sup>74</sup> These backlashes loom large in discussions among domestic violence advocates. Real fears exist within the movement that engagement with women as offenders will be co-opted by the men's rights movement to negative ends.<sup>75</sup>

And indeed these groups should not be taken lightly. They represent real danger and risks.<sup>76</sup> Some of these groups are "transparently anti-feminist."<sup>77</sup> They have been described as "at best, 'overly simplistic' and unsupported by research, and at worst 'demonstrat[ing] an alarming level of anti-feminism and overt negativity towards women as a group.'"<sup>78</sup> And they have achieved other legislative successes, such as joint custody and friendly parent laws.

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71. See Kandaswamy, *supra* note 12, at 259 ("Consequently, when they demanded that state institutions protect women from violence in their homes, they also failed to see the state as a perpetrator of violence in many women's lives.").

72. See Goldscheid, *supra* note 40, at 632.

73. Kimmel, *supra* note 17, at 1333.

74. *Id.* at 1334.

75. See, e.g., Sack, *supra* note 26, at 1711 ("It is helpful for men's rights proponents and pseudofeminists to be able to note that battered women's advocates have critiques of current domestic violence policy. But, it is even better to be able to cite a self-described battered women's advocate who now believes in much of what these groups espouse.").

76. The Southern Poverty Law Center compared certain strands of men's rights groups to the work of white supremacists and other hate groups in their "level of vitriol and claims to equality through complaints of reverse prejudice." Behre, *supra* note 63 at 542.

77. *Id.* at 539 (noting that many have "an underlying goal of reestablishing patriarchy").

78. *Id.* at 545 (citation omitted) (noting that some of the rhetoric today sounds "less alarming and more nuanced").

Thus, at least three sound explanations have supported the strategy of containment's use in the domestic violence movement historically.<sup>79</sup> The next Part will begin a holistic analysis of the benefits of moving beyond this strategy.

## II. THE BENEFITS OF MOVING BEYOND A STRATEGY OF CONTAINMENT

While sound explanations have historically supported the deployment of the strategy of containment, it is time to consider fully the benefits to moving beyond a strategy of containment to determine if the rarely-discussed holistic benefits outweigh the often-discussed risks. While we have treated women's acts of violence as something of a "third rail" within the domestic violence movement, there might actually be power and energy to be gained by making a feminist case for understanding women's violence. Might moving beyond the strategy of containment paradoxically propel or catalyze progress in the quest to end violence against women? Might its benefits extend even further to feminism more broadly and to larger political and social benefits? This Part first explores the potential benefits to the domestic violence and feminist movements' longevity and trajectory. It considers how the movements might become more inclusive, more sustainable within modern gender theory, and more effective.

### A. *The Domestic Violence Movement*

Because the strategy of containment is largely a responsive strategy to challenges to the domestic violence reforms within the larger feminist movement, this Section begins with a direct examination of benefits to the domestic violence movement itself.

#### 1. *The Movement's Infrastructure and Foundation*

Much of the domestic violence movement's foundation and infrastructure was built upon the "oneness" of women as victims and men as perpetrators. This frame has been the "core organizing tool for feminists engaged in the domestic violence movement."<sup>80</sup> While this gender binary created a "group cohesiveness" for women historically within a "male-privileged society," the

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79. This Section offers three explanations that are interconnected, but of course, there are other possible explanations as well. For example, fear of change may drive a strategy of containment. As one domestic violence advocate revealed, "there's a tremendous fear of change . . . I think the goal is still solid—but [fear of] new methodologies or new partners or new people has excluded some really creative, interesting stuff." Lehrner & Allen, *supra* note 8, at 671.

80. Weissman, *supra* note 60, at 230.

concept of “women-as-victims . . . as an identity vis-à-vis a male partner” is lacking in critical economic, political, structural complexity.<sup>81</sup>

There is a real risk that popular understandings of gender are evolving faster than the movement is adapting,<sup>82</sup> particularly among young people. This reality risks the domestic violence movement becoming too inflexible, entrenched, or stagnant in its relationship to gender.<sup>83</sup> It threatens the foundation and infrastructure of the movement. Biological, theoretical, medical, and popular understandings of gender have changed dramatically since the domestic violence movement emerged. To retain an entrenched gender binary is to “reinscribe[] the traditionally unrecognized, but unstable, categories of male and female . . . . It reinforces binary conceptions of gender that are inconsistent . . . with contemporary medical technology and expertise.”<sup>84</sup>

There is a real risk that the domestic violence movement will lose its collective identity entirely as fewer women—particularly young women—connect with its central gendered binary framing in how they view and interpret the world.<sup>85</sup> Indeed some domestic violence advocates, particularly younger workers and rural workers, already explicitly seek to distance themselves from the larger women’s movement, seeking to provide services to women and children but not to engage in a larger social critique.<sup>86</sup> Some current advocates worry explicitly that focusing on gender “perpetuates stereotypes.”<sup>87</sup> Other advocates today are simply “unaware of the existence of the [domestic violence] movement or unable to articulate its central propositions.”<sup>88</sup> Some advocates already have no consciousness of a “domestic violence movement” and have come to frame their work assisting victims “as a depoliticized, degendered phenomenon that does not distinguish relationship violence from other types of violence or abuse within the family and is conceptualized entirely at the level of the individual.”<sup>89</sup>

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81. *See id.* at 230-31.

82. *See* Richard A. Friedman, Opinion, *How Changeable Is Gender?*, N.Y. TIMES (Aug. 22, 2015), <http://www.nytimes.com/2015/08/23/opinion/sunday/richard-a-friedman-how-changeable-is-gender.html> (stating that the “prevailing narrative is that gender is a social construct and that people can move between genders to arrive at their true identity”).

83. *See generally* Goodman & Epstein, *supra* note 7 (considering the risks of criminal justice reforms taking on “relatively inflexible, one-size-fits-all mandatory response focused on counseling, restraining, and punishing batterers to prevent them from reoffending”). The authors worry that the existing system loses the “contextualized, woman-centered focus from which the antidomestic violence movement originated.” *Id.* at 480.

84. *See* Goldscheid, *supra* note 40, at 631, 636.

85. Alex Williams, *How to Spot a Member of Generation Z*, N.Y. TIMES (Sept. 18, 2015), <http://www.nytimes.com/2015/09/18/fashion/how-to-spot-a-member-of-generation-z.html> (“This group seem much less attached to traditional gender binaries or linear definitions of sexuality,” said Lucie Greene, a trend forecaster at J. Walter Thompson, the advertising giant. “It’s all about individualism and the right to be whatever you want.”).

86. Lehrner & Allen, *supra* note 8, at 663.

87. *Id.* at 664 (internal quotation marks omitted).

88. *Id.* at 673.

89. *Id.* at 662.

The risk of “essentializing” the movement is about the *who* of the movement, but also the *what* of the movement. It pushes against a trajectory that the *work* of the movement becomes essentialized as exclusively individual victim services provision, rather than systemic social change and reform.<sup>90</sup> It is critical that the movement remain relevant to and engaged with diverse communities and not entrench in a framework that is unnecessarily exclusionary or outdated.<sup>91</sup> Domestic violence leaders self-report that they *do* want the movement to “include openness to new strategies and approaches, better inclusion of communities of color, a rethinking of community engagement and collaboration, and attention to mentoring the next generation of advocates.”<sup>92</sup> Some advocates see this as “critical to the future of the movement.”<sup>93</sup> Some advocates anecdotally describe a “fortress mentality,” that can compromise the need to “get out in our community and do the community work.”<sup>94</sup> This insularity constrains innovation.<sup>95</sup>

As one advocate explained in a survey:

[We] need a revolution . . . in this movement. I think that we are not giving ourselves the opportunity to change the way we did things years ago, because we gotta do it different—we are looking at different times . . . And when, 20 years from now, when somebody writes the history, they’ll say “Oh, these people just let it happen,” you know, “‘cuz they were not more revolutionary.”<sup>96</sup>

Advocates leading domestic violence organizations indeed recognize the challenge of “creating room for innovative ideas and collaborations without compromising core values and goals.”<sup>97</sup>

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90. See Kandaswamy, *supra* note 12, at 260 (“[A] structural problem is reframed as a question of cultivating individual skills and responsibility, and reform of the individual is seen as a means of moving women from dependency (whether on the state or on an abusive partner) to independence.”).

91. See Lehmer & Allen, *supra* note 8, at 673.

92. *Id.* at 669.

93. *Id.* at 671.

94. *Id.*

95. *Id.* (“[A] failure to engage with local communities constrains both the nature of interventions with victims and the possibilities for creative new approaches to social change.”).

96. *Id.* at 657.

97. *Id.* at 669. And there are strong examples of innovative models within the domestic violence movement that are tightly interconnected to other systemic community conversations. For example, INCITE is an organization that “sets out to end violence against women, gender-nonconforming, and trans people of color and their communities.” Zai, *Social Justice Approach to Ending Domestic Violence in Context*, BCRW BLOG (Apr. 7, 2014), <http://bcrw.barnard.edu/blog/social-justice-approach-to-ending-domestic-violence-in-context>. This organization acknowledges the dangerous intersections of violence by race, class, and gender. It understands that “increasing law enforcement is actually not helpful in the fight to end domestic and sexual violence against women of color.” *Id.* These conversations bring the law reform responses involving victims and perpetrators together. Other examples exist of collaboration between anti-violence groups in communities generally and initiatives to end domestic violence. See *id.* (describing a collaboration among NY-based anti-violence groups and

## 2. *The Movement's Goals*

### a. Moving Beyond a Masculinist Frame for Domestic Violence

Part of the work of the domestic violence movement has been about overcoming gendered stereotypes in understanding domestic violence.<sup>98</sup> Moving beyond a strategy of containment stands to diffuse some of the most entrenched of stereotypes that plague understandings of domestic violence and may even reinforce it.

Addressing women's violence would work to dismantle the masculinist frames that currently dominate our understandings of domestic violence offenders.<sup>99</sup> This masculinist frame has deep historic roots and an entrenched modern presence. Historic responses to "wife beating" were more about policing masculinity norms than women's equality. This reinforced the tethering of masculinity to violence and femininity to vulnerability.<sup>100</sup> Elizabeth Katz has challenged the conventional narrative that there was *no response* to domestic violence before the feminist law reforms of the twentieth century. Instead, she has revealed how the state responded to male violence against women in ways that sometimes used vigilante violence to regulate masculinity. This left the state policing masculinity norms with violence. Some judges "condone[d] extralegal violence against wife beaters, even occasionally participating in such violence themselves. This hands-on approach was celebrated, often in ways that emphasized the manly aggression of the judge's conduct."<sup>101</sup> One judge, for example, famously "descended from the bench, tore off his coat, and soundly thrashed a chronic wife beater."<sup>102</sup> While the judge acknowledged that his conduct was illegal, he received "scores of letters from men and women thanking him for what he ha[d] done for oppressed and abused wives."<sup>103</sup> This kind of "[v]igilante violence" included judges, family members, and even "furious mobs of anywhere from half a dozen to hundreds of

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domestic violence groups, which sought to "explore the challenges of building a broader anti-violence movement within a social and gender justice framework").

98. See, e.g., Elizabeth L. MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. GENDER RACE & JUST. 531, 532 (2013) ("Domestic violence is a serious social problem that is frequently unrecognized, minimized, or ignored because of stereotypes about who is at risk and from whom.").

99. Carolyn B. Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention*, 120 PENN ST. L. REV. (forthcoming 2016) (explaining that there has been relatively little feminist inquiry into batterers' motivations and the underlying explanations other than the iconic framing of the controlling male batterer).

100. See generally Jamie R. Abrams, *The Collateral Consequences of Masculinizing Violence*, 16 WM. & MARY J. WOMEN & L. 703 (2010).

101. Elizabeth Katz, *Judicial Patriarchy and Domestic Violence: A Challenge to the Conventional Family Privacy Narrative*, 21 WM. & MARY J. WOMEN & L. 379, 412 (2015).

102. *Id.* at 413 (noting that he became famous "all over the country and in Europe, too").

103. *Id.* (citing the judge's inquiry, "where is the judge or jury who would convict a man for thrashing a wife beater?" (internal citation omitted)).

people.”<sup>104</sup> Thus, physical violence against male abusers was seen historically “as acceptable and even ‘heroic.’”<sup>105</sup>

Even the narratives about women abusing men turned to being primarily about the gender non-conformance of *men* who were abused. “Men who beat their wives were unmanly cowards, while their wives embodied feminine weakness and dependence.”<sup>106</sup> “[M]en who ‘allowed’ their wives to beat them were so unmanly that they did not deserve society’s care or protection.”<sup>107</sup>

Not adequately acknowledging the role of women as perpetrators perpetuates these historic myths of masculine strength, not power and control, as central to domestic violence.<sup>108</sup> Yet domestic violence at its core is about the exercise of power and control in an intimate partner setting.<sup>109</sup> This focus on strength and physicality is problematic when “[c]entral to the feminist narrative is the idea that men who abuse are not generally angry or violent; rather, they only abuse their partners as a means of asserting power and control.”<sup>110</sup>

The National Football League’s high-profile role in domestic violence policy underscores these concerns of stereotyping domestic violence as about physical strength alone. Following images of Ray Rice abusing his now-wife and the intense critique of the League’s response,<sup>111</sup> the NFL issued a new personal conduct policy.<sup>112</sup> Notably, the stated concern is about the League’s connection to behavior that is “illegal, violent, dangerous, or irresponsible.”<sup>113</sup> It does not address the power, coercion, and control aspects of domestic violence. The NFL also spoke in the language of historic patriarchy when the Commissioner, Roger Goodell, declared that the NFL would “get our house in

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104. *Id.* at 415.

105. *Id.* at 416.

106. *Id.* at 434.

107. *Id.*

108. See HUNTER, *supra* note 37, at 20.

109. Schneider, *supra* note 12, at 356.

110. Leigh Goodmark, *Hands Up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse* 21 (Univ. of Md., Legal Studies Research Paper No. 2015-4), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2575677](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2575677) (considering whether a militarized police force can adequately respond to domestic violence).

111. See generally Childs Walker, *One Year After Ray Rice Incident, Impacts Abound for Ravens, NFL, Domestic-Violence Activists*, BALT. SUN (Feb. 15, 2015), <http://www.baltimoresun.com/sports/ravens/bs-sp-ray-rice-one-year-20150214-story.html> (describing the incident and its aftermath and providing a chronology of events).

112. *Personal Conduct Policy*, NAT’L FOOTBALL LEAGUE 1 (Dec. 2014), <http://static.nfl.com/static/content/public/photo/2014/12/10/0ap3000000441637.pdf> (subjecting everyone who is part of the league to discipline if they engage in prohibited conducts, such as assault, battery, stalking, harassment).

113. *Id.*

order first.”<sup>114</sup> It positioned a physical, masculine institution to regulate masculine behavior consistent with historic patterns.<sup>115</sup>

In contrast, the Canadian Football League also launched public service announcements and increased its engagement, but it did so around promoting “healthy relationships” and “respect” and a “Be More Than a Bystander” message seeking to engage everyone in the solutions.<sup>116</sup> As Don McPherson, former NFL quarterback and social activist, said in response to the U.S. policy:

It doesn't address the core issue of men's violence against women, which is the culture of masculinity and men that leads to misogyny and sexism and the overall notion that women are less than, which is very much a message that comes out of a lot of language in sport. And until we address those core issues, the problem will continue, and all the NFL is going to be creating [is] a criminal state in their league.<sup>117</sup>

Domestic violence can be understood to be about gender non-conformity in ways that are more enduring. For women, socialized not to use violence, the use of violence itself is gender nonconforming.<sup>118</sup> This suggests a stronger need to examine women's violence than the “strategy of containment” alone might contemplate.

Gender non-conformity also explains some instances of male violence. Men, for example, might “find it emasculating to reveal that their assumed control over ‘their women’ is so tenuous that they are forced to use violence to keep them ‘in line.’”<sup>119</sup> “By deconstructing the myth of the nonaggressive woman, the trap of gendered dualism (male/female: powerful/weak: perpetrator/victim) is recognized and the advantage of the myth to men is diminished.”<sup>120</sup> Addressing women's violence within existing theory and policy “perhaps ironically . . . can better illuminate the dynamics of men's aggression against women.”<sup>121</sup>

114. Diana Moskovitz, *Do the NFL's Anti-Violence Initiatives Actually Even Exist?*, DEADSPIN (Feb. 1, 2015, 12:12 PM), <http://deadspin.com/do-the-nfls-anti-domestic-violence-initiatives-actually-1682681513>.

115. *Id.* (quoting Goodell that “we can use the NFL to help create change. Not only in our league, but in society with respect to domestic violence and sexual assault”).

116. Jackson Katz, *Pro Football Already Plays a Key Role in Domestic Violence Prevention*, HUFFINGTON POST (Sept. 16, 2004), [http://www.huffingtonpost.com/jackson-katz/cfl-domestic-violence\\_b\\_5827306.html](http://www.huffingtonpost.com/jackson-katz/cfl-domestic-violence_b_5827306.html).

117. Moskovitz, *supra* note 114.

118. Kimmel, *supra* note 17, at 1344 (noting that the consequences of this lead women to overestimate their use of violence when surveyed because they remember every transgression). “Any use of violence by women must be explained by characterizing such women as being more like men. Be they born or environmentally fostered, women criminals are portrayed as the *others* to be feared.” Elizabeth A. Stanko, *Women, Danger, and Criminology*, in *WOMEN, CRIME, AND CRIMINAL JUSTICE: ORIGINAL FEMINIST READINGS* 13, 15 (Claire M. Renzetti & Lynne Goodstein eds., 2001).

119. Kimmel, *supra* note 17, at 1344.

120. Jacquelyn White & Robin Kowalski, *Deconstructing the Myth of the Nonaggressive Female: A Feminist Analysis*, 18 *PSYCHOL. WOMEN Q.* 487, 504 (1994).

121. Kimmel, *supra* note 17, at 1354.

b. Moving Beyond the Pathologizing and Marginalizing of Women's Domestic Violence

Understanding women's acts of violence within feminism would also start to embrace the full diversity of women's experiences. It would move away from the long history of pathologizing and marginalizing women who use violence and aggression.

Women's acts of violence and aggression have been marginalized and pathologized generally in law, society, and politics.<sup>122</sup> They have been marginalized by being "othered" as something freakish or anomalous. Women who abused their husbands under the common law were believed to have committed a treasonous act, as the man was king of the home.<sup>123</sup> The dominant narrative has been to highlight how "husband beating" was uniquely "overlooked, unpunished, or even mocked" historically, although modern scholars have begun to disrupt that traditional historical account.<sup>124</sup> Judges were often puzzled as to what to do with women abusers.<sup>125</sup> In one 1920 case, for example, a husband alleged domestic abuse and sued in tort. The court described the wife's physical and emotional abuse merely as "what is commonly known and understood as nagging."<sup>126</sup> Many news and media accounts treated women's abuse of men as an "entertaining novelty to be exploited for comedic value."<sup>127</sup> Women abusers still yield a "man-bites-dog" type of freakish story.<sup>128</sup>

This marginalization exists even in existing approaches to responding to domestic violence. Gender differentiated Batterer's Intervention Program (BIP) certification requirements, for example, reveal how women's acts of violence are deviations from essentialized womanhood, while male violence is

122. Stanko, *supra* note 118, at 15 ("Throughout the history of criminology, women's law-breaking was portrayed as out of character for normal women. . . . With few exceptions even today, criminology textbooks address explanations of women's criminality as being out of character for normal women.").

123. See Mary Anne Franks, *Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women's Syndrome, and Violence as Male Privilege*, 68 U. MIAMI L. REV. 1099, 1112 (2014).

124. Katz, *supra* note 101, at 387. See generally Carolyn B. Ramsey, *A Diva Defends Herself: Gender and Domestic Violence in an Early Twentieth-Century Headline Trial*, 55 ST. LOUIS U. L.J. 1347 (2011) (analyzing an early twentieth century case and concluding that "[r]ather than being pure entertainment of a salacious variety, the trial and acquittal of Mae Talbot tapped into the wider social and legal condemnation of men's violence against their intimate partners, regardless of wealth or class, in the early twentieth century"); Carolyn B. Ramsey, *Domestic Violence and State Intervention in the American West and Australia, 1860-1930*, 86 INDIANA L.J. 185 (2011) (concluding that "there was greater public concern about violent marriages than scholars have realized" and documenting seventy years of criminal prosecution of "wife beaters" on two continents to show that "this was not just an isolated peak of intervention in a long history of apathy toward domestic violence").

125. Katz, *supra* note 101, at 425 (quoting one judge stating "I know very well what to do with a man who beats his wife . . . but I have not much experience . . . with a wife who beats her husband" and another who said he needed to "sleep on the evidence before pronouncing the sentence" (internal citation omitted)).

126. *Id.* at 421 (internal citation omitted).

127. *Id.* at 422.

128. Kimmel, *supra* note 17, at 1334.

normalized and internalized.<sup>129</sup> Kentucky has codified program requirements governing BIPs that arguably normalize male violence and marginalize female violence. Many aspects of the Kentucky BIP requirements are the same for men and women, such as the requirements to provide content defining domestic violence, discussing the cycle of violence, and developing nonviolent methods for resolving conflict.<sup>130</sup> Male abusers, however, are uniquely instructed in the following three areas:

- “confrontation of rigid sex role stereotyping,”
- “development of a relapse prevention technique,”
- and “promotion of aftercare, if indicated.”<sup>131</sup>

Importantly, the focus on relapse prevention and aftercare are *in addition to* the requirements of challenging a male client’s “*pattern* of aggression in a conflict with a victim” and exploring “a constructive and nonviolent method for resolving conflict in a relationship” that apply to both men and women’s BIP programs.<sup>132</sup>

Women share the male curriculum, except for the three provisions cited above, which do not apply to women. Women do not consider sex stereotyping, prevention of relapse, or aftercare. Instead, women’s programs focus on the following areas unique to women’s BIPs:

- “[e]xploration of life experiences and belief systems that have fostered choices for violent behavior;”
- “[s]afety planning and knowledge of domestic violence resources;” and “[d]evelopment of an aftercare plan.”<sup>133</sup>

This suggests that women must uniquely account for their violence. It suggests that something went wrong for women in their lives and experiences, whereas men were expected to commit violence. Men’s violence is framed as uncontrollable and relapses are expected. Women’s violence is an aberration and a choice. To the extent that women need “aftercare” it seems to be because they will be victims accessing domestic violence resources, not because they may need additional care as abusers. Some life experience fostered this aberration for women. Why should women not study the sex stereotypes that

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129. The most widely used BIP model is the Duluth model, which seeks to challenge male subordination of women by teaching equality and respect. *See, e.g.,* Poco Kernsmith & Roger Kernsmith, *Treating Female Perpetrators: State Standards for Batterer Intervention Services*, 54 SOC. WORK 341, 342 (2009).

130. 920 KY. ADMIN. REGS. 2:020(1)(10) (2015).

131. *Id.* at (10)(7)(g); (10)(7)(l); (10)(7)(m).

132. *Id.* at (10)(7)(h); (10)(7)(j) (emphasis added).

133. 920 KY. ADMIN. REGS. 2:020 (2015); *id.* at 10.10(a)(2)(i); *id.* at 10.10(a)(2)(k); *id.* at 10.10(a)(2)(l).

underlie gendered violence as well? Why should men not also explore the life experiences and belief systems? Is not men's violence a choice as well?<sup>134</sup>

When women are perpetrators of domestic violence, the consequences that they face in the criminal justice system and beyond are also harsher. Women who abuse their male partners are more likely to be arrested for their abuse than men.<sup>135</sup> The nature of violence itself can be different too.<sup>136</sup> Because of the lack of female prisons, women are typically sent farther away from their families—usually over one hundred miles.<sup>137</sup> While incarcerated, 38% of women will not be able to see their children.<sup>138</sup> Thus, for female prisoners, maintaining a close and caring relationship with their children is difficult. Over three quarters of reported cases of sexual abuse by correctional officers are cases of male officers abusing female prisoners.<sup>139</sup>

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134. See generally Smith, *supra* note 27, at 391-92 (“Many of the same factors that give rise to women committing acts of violence apply to boys and men. Family violence is a shared root cause of subsequent violence. The same social and political conditions that give rise to violence against women give rise to violence by men.”).

135. Marianne Hester, *Who Does What to Whom? Gender and Domestic Violence Perpetrators*, N. ROCK FOUND. 9 (2009), <http://www.nr-foundation.org.uk/downloads/Who-Does-What-to-Whom.pdf>.

136. Women are undeniably capable of violence in intimate relationships, political revolutions, terrorist activities, and more. Shamita Das Dasgupta, *A Framework for Understanding Women's Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364, 1369 (2002). Women have the potential to be abusive, but their violence toward heterosexual partners is often distinguishable from men's violence towards heterosexual partners in terms of context, motivation, result, and consequences. To be able to distinguish these types of violence, a full contextual analysis of the relationship is necessary, rather than the frequent “tendency to remove such behavior from its complete context.” *Id.* at 1377. The research indicates that women who assault their heterosexual partners are distinct from men who engage in battering behaviors, as most of the women are victims of ongoing abuse. The consequences of women's violence differ as well—as perceptions of women's abusive behavior are fundamentally different than that of men's. For example, women tend to recognize such behavior as “a violation of their socially prescribed gender role and readily confess to their transgressions,” whereas men tend to minimize violence against female partners and/or blame the victims. *Id.* Dasgupta notes three different bodies of research regarding women who perpetrate violence against their partners—research on gender symmetry of intimate abuse, research on women's violence as self-defense and retaliatory action, and research on multiple causality of women's violence. *Id.* at 1370-77. Dasgupta criticizes attempts to compartmentalize women's motivations for engaging in violent behavior toward intimate partners as either self-defense or retaliation, saying that to do so is to disregard the complexities of women's lives. *Id.* at 1373. Instead she advocates the ecological nested model. *Id.* (This model contains four interactive levels: (a) the individual level that considers a person's childhood socialization, past experiences and personal perceptions of these; (b) a micro-system level that captures the immediate situation; (c) the exo-system level that entails the structure and systems of the society in which one lives; and (d) the macro-system level that involves the larger background of group history, culture, and ethnicity.)

137. Julie Ajinkya, *Rethinking How to Address the Growing Female Prison Population*, CTR. FOR AM. PROGRESS 8, 8 (Mar. 2013), <https://www.americanprogress.org/issues/women/news/2013/03/08/55787/rethinking-how-to-address-the-growing-female-prison-population>.

138. *Id.*

139. *Incarcerated Women*, SENTENCING PROJECT 3 (Dec. 2012), [http://www.sentencingproject.org/doc/publications/cc\\_Incarcerated\\_Women\\_Factsheet\\_Dec2012final.pdf](http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Dec2012final.pdf).

Women's violence has also been pathologized. Women's violence prior to the mid-twentieth century was "sometimes depicted as insane or hysterical."<sup>140</sup> Women who killed their abusers were "often viewed as crazy, 'monstrous,' or unreasonable."<sup>141</sup>

A pathologized frame persists today. "Stand Your Ground" laws, for example, normalize archetypal male violence against strangers, while pathologizing and condemning women's violence against their intimate abuser.<sup>142</sup> The common law "castle doctrine" gave home residents—archetypally a man defending his family—the legal right to use deadly force to defend against an intruder without retreat.<sup>143</sup> Many American courts later expanded this common law rule in the late nineteenth century to include no duty to retreat, even in public places, a legal move that Jeannie Suk characterized as the "right of the 'true man' to defend himself without fleeing wherever he had a right to be."<sup>144</sup> This legal rule became an Americanized "ideal of the 'true man' standing his ground," rendering flight from attack as cowardly and unmanly.<sup>145</sup>

Some modern "Stand Your Ground" laws go even further. Since 2005, some states have created a presumption that a fear of bodily harm is reasonable when an intruder enters your property coupled with immunity from civil or criminal action.<sup>146</sup> Again, the laws only apply to someone engaged in an unlawful forceful entry of an occupied vehicle or dwelling, but the presumption does not apply to a cohabitant attacker.<sup>147</sup> Thus, victims of domestic violence cannot shoot their abuser in the dwelling because there is no intrusion into the dwelling itself.

This leaves women to instead invoke the pathology of Battered Women's Syndrome to help the jury understand the reasonableness of their actions, while male actions in response to an unknown intruder are presumed reasonable.<sup>148</sup> This Syndrome is well understood today to "perpetuate stereotypes and the

140. Carolyn B. Ramsey, *The Exit Myth: Family Law, Gender Roles, and Changing Attitudes Toward Female Victims of Domestic Violence*, 20 MICH. J. GENDER & L. 1, 28 (2013).

141. Vi T. Vu, Note, *Town of Castle Rock v. Gonzales: A Hindrance in Domestic Violence Policy Reform and Victory for the Institution of Male Dominance*, 9 SCHOLAR 87, 116 (2006).

142. See Franks, *supra* note 123, at 1126.

143. Jeannie Suk, *The True Woman: Scenes from the Law of Self Defense*, 31 HARV. J.L. & GENDER 237, 239 (2008).

144. *Id.*

145. *Id.* at 243, 245 ("The man defending his family against attack at home was the implicit model for the 'true man' of self-defense law who in fact was permitted to defend himself without retreating from any place where he had a right to be.")

146. *Id.* at 259-62.

147. See Franks, *supra* note 123, at 1112. However, some jurisdictions would include a cohabitant defense if a Civil Protection Order is in place. See Suk, *supra* note 143, at 269-72.

148. See Donna Coker, Foreword, "Stand Your Ground" in Context: Race, Gender, and Politics, 68 U. MIAMI. L. REV. 943, 950 (2014) (citing Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 49 (1991)).

pathologization of battered women's behaviour."<sup>149</sup> It is effective when women are "acted upon rather than acting, and they are helpless, hurting, and victimized—preferably whilst simultaneously performing well as wives and mothers."<sup>150</sup> It works for women who "meet the appropriate indices of femininity."<sup>151</sup> It is ineffective when contrasted with women who display "assertiveness, strength, and strategic decision-making."<sup>152</sup>

Yet Battered Women's Syndrome constructed a very different conception of the "true woman" as articulated by Jeannie Suk. Importantly, "the castle doctrine did not apply if the attacker was a cohabitant."<sup>153</sup> Battered women could kill their abusers—"not because of a right that she had there, but because she lacked the capacity to retreat."<sup>154</sup> The "true woman" is thus a subordinated woman, even as she exercises her agency in self-protection, Suk concluded.

This creates a "two-track system of self-defense."<sup>155</sup> Men invoking the Stand Your Ground defense are considered to have a legal justification, whereas women have an excuse.<sup>156</sup> "Stand Your Ground defendants engender admiration; Battered Women's Syndrome defendants plead for mercy on the basis of what is essentially considered a psychological defect."<sup>157</sup> Men "defend their castle" as "real men," while women who attack an intimate cohabitant are pathologized.<sup>158</sup>

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149. See, e.g., Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*, YALE J.L. & FEMINISM 76, 82 (2008) (describing the dramatic ways in which the actual narratives of women who fight back differ from the battered women's syndrome); Julie Stubbs & Julia Tolmie, *Defending Battered Women on Charges of Homicide: The Structural and Systemic Versus the Personal and Particular*, in WOMEN, MADNESS AND THE LAW: A FEMINIST READER 191, 198 (Wendy Chan et al. eds., 2005).

150. Stubbs & Tolmie, *supra* note 149, at 10.4.1.

151. *Id.*

152. In examining the historical framing of domestic violence, Stark noted that underlying the norm of domesticity when an otherwise respectable woman responded violently to abuse, the most obvious explanation was that she was insane. Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 993 (1995). It was easier for courts to acquit on grounds of insanity than to acknowledge that the behavior widely viewed as part of the marriage contract could provoke rational women to violence. *Id.* Thus the insanity defense was premised on the stereotypical belief that aggression and violence were unnatural in women. *Id.* at 994. Since only the "respectable woman" could be shocked into insanity then, "rough" women were convicted and sent to jail. *Id.* An alternative to the insanity defense was appealing to the court's paternalism by portraying the abused woman as frail and helpless. *Id.*

153. Suk, *supra* note 143, at 250.

154. *Id.* at 239.

155. Franks, *supra* note 123, at 1102.

156. *Id.* at 1122.

157. *Id.*

158. Most battered women's killings of their intimate partners also occur during a confrontation, not while their partner was sleeping or following some other lag time. V.F. Nourse, *Self-Defense and Subjectivity*, 68 U. CHI. L. REV. 1235, 1253 (2001). "Male violence is not only tolerated, but celebrated, whereas women's violence is not only discouraged, but stigmatized." Franks, *supra* note 123, at 1103.

This phenomenon of marginalizing and pathologizing women's acts of violence applies to women as perpetrators of domestic violence, but also to women as other violent or aggressive actors more broadly.<sup>159</sup>

### c. A More Inclusive Movement

Moving beyond the strategy of containment might also foster a more inclusive movement. The LGBT community has launched sustained critiques of the feminist movement for its lack of inclusiveness.<sup>160</sup> For example, early framings of the second-wave feminist movement sometimes described the "lavender menace" as it struggled to incorporate the needs of lesbian women within the movement more broadly. Early critiques contested the heterosexist culture of the movement and sought a more inclusive agenda.<sup>161</sup>

These critiques still fester within the domestic violence movement today.<sup>162</sup> Victims of domestic violence are still problematically perceived as married, straight women,<sup>163</sup> despite data revealing that same-sex domestic violence occurs at about the same rate as in opposite-sex couples.<sup>164</sup> Data about same-sex partner abuse is only recently available and it is also woefully

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159. See, e.g., Deborah Cantrell, *Re-Problematizing Anger in Domestic Violence Advocacy*, 21 AM. U. J. GENDER SOC. POL'Y & L. 837 (2013) (arguing that emotion and conduct generated by emotion should be disentangled). This pathologizing and marginalizing of women's violence includes women's acts of violence against their own children as well. Michelle Oberman examined mothers who kill their children and concluded that "[u]nsurprisingly, then, maternal filicide generally is regarded as a crime committed by 'crazy' women." Michelle Oberman, *Mothers Who Kill: Cross-Cultural Patterns in and Perspectives on Contemporary Maternal Filicide*, 26 INT'L J.L. & PSYCHIATRY 493, 493 (2003). This pathologizing ignores the larger social and cultural context in which women's violence occurs. It treats maternal violence against children as exceptional and marginal. Oberman recommends ultimately the need to "reevaluate societal norms governing motherhood and women's status, insuring that they are not generating unintended negative consequences . . ." *Id.* at 494. See generally Jennifer M. Collins, *Lady Madonna, Children at Your Feet: The Criminal Justice System's Romanticization of the Parent-Child Relationship*, 93 IOWA L. REV. 131 (2007) (analyzing American romanticizations of parents' relationships to their children).

160. See, e.g., Adele M. Morrison, *Queering Domestic Violence to "Straighten Out" Criminal Law: What Might Happen When Queer Theory and Practice Meet Criminal Law's Conventional Responses to Domestic Violence*, 13 S. CAL. REV. L. & WOMEN'S STUD. 81 (2003) (noting that what feminists did for domestic violence was to sex it—to conflate gender and sex by defining the battered woman as a stereotypical, heterosexual, gender static female woman, a hetero-normative construct that prevented the criminal law system from accurately assessing and intervening in same-sex domestic violence).

161. See JULIE A. GREENBERG, *INTERSEXUALITY AND THE LAW* 103 (2012) (describing the work of the 1970 Second Congress to Unite Women).

162. See, e.g., Maya Shwayder, *A Same-Sex Domestic Violence Epidemic Is Silent*, ATLANTIC (Nov. 5, 2013), <http://www.theatlantic.com/health/archive/2013/11/a-same-sex-domestic-violence-epidemic-is-silent/281131> (concluding that domestic violence is still thought of as a heterosexual problem, which creates obstacles accessing research and funding).

163. *Id.* (quoting Yejin Lee, at the Anti-Violence Program in New York City, stating that "one problem is the way domestic violence has been framed for the past thirty years").

164. Aviram & Persinger, *supra* note 13, at 160.

incomplete.<sup>165</sup> In 2013, the Centers for Disease Control released data on victimization by sexual orientation. It concluded that 75% of bisexual women had been with a violent partner compared to 47% of bisexual men; 46% of lesbian women had been with a violent partner compared with 43% of straight women; and 40% of gay men had been with a violent partner compared with 21% of straight men.<sup>166</sup>

The historic origins of the domestic violence movement as a battered *women's* movement is framed on a gendered binary that leaves both female perpetrators and female victims of female abuse out of the frame.<sup>167</sup> This framing perpetuates myths and stereotypes and stifles access to services.<sup>168</sup> This leaves women perpetrators marginalized both because of criminal activity *and* because they defied inaccurate gender stereotypes of passivity and nurturing.<sup>169</sup> One vignette study revealed a decline in likelihood to report domestic violence the farther the scenario moved from the stereotypical male abuser/female victim scenario.<sup>170</sup>

Part of this limitation is about heterocentric law reforms, part of it is about the marginalization of gay and lesbian relationships,<sup>171</sup> but another aspect of it is about the dissonance of understanding women as abusers. As one advocate described in a recent issue of *The Atlantic* examining the silent epidemic of same-sex domestic violence: “The idea that a woman can be the one who’s abusive throws a wrench in the traditional view. The idea that only men can be

165. CDC Releases Data on Interpersonal and Sexual Violence by Sexual Orientation, CTRS. FOR DISEASE CONTROL & PREVENTION (Jan. 25, 2013), [http://www.cdc.gov/media/releases/2013/p0125\\_NISVS.html](http://www.cdc.gov/media/releases/2013/p0125_NISVS.html); Nat’l Ctr. for Injury Prevention & Control, *NISVS: An Overview of 2010 Findings on Victimization by Sexual Orientation*, CTRS. FOR DISEASE CONTROL & PREVENTION (2013), [http://www.cdc.gov/violenceprevention/pdf/cdc\\_nisvs\\_victimization\\_final-a.pdf](http://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_victimization_final-a.pdf) (concluding that “little is known about the national prevalence of intimate partner violence, sexual violence, and stalking among lesbian, gay, and bisexual women and men in the United States”).

166. Mikel L. Walters et al., *National Intimate Partner and Sexual Violence Survey: 2010 Findings on Victimization by Sexual Orientation*, CTRS. FOR DISEASE CONTROL & PREVENTION 1 (Jan. 2013), [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_sofindings.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf).

167. Colleen Stiles-Shields & Richard A. Carroll, *Same-Sex Domestic Violence: Prevalence, Unique Aspects, and Clinical Implications*, J. SEX & MARITAL THERAPY, Sept. 2014, at 1; Ramsey, *supra* note 99 (explaining how BIPs entrenched the view of domestic violence as acts committed by men against women because of the “values and power dynamics of a male-dominated society”).

168. See generally Aviram & Persinger, *supra* note 13, at 159-67 (describing misperceptions of abuse and perceived harms in approaching the police that undermine reporting and responses); Amanda J. Schmesser, Note, *Real Men May Not Cry, But They Are Victims of Domestic Violence: Bias in the Application of Domestic Violence Laws*, 58 SYRACUSE L. REV. 171 (2007).

169. Same-sex domestic violence forces re-examination of our gendered understanding of domestic violence as well as our understanding of gender and how gender and domestic violence interact with sex and sexual orientation. Morrison, *supra* note 160, at 90-91. Morrison argues that there is a conflation of sex, gender, and sexual orientation and a failure to recognize that gender is more than “man” and “woman” but that sex and sexual orientation are aspects of gender as well. *Id.*; see, e.g., Stiles-Shields & Carroll, *supra* note 167.

170. See Aviram & Persinger, *supra* note 13, at 185.

171. See, e.g., Knauer, *supra* note 53, at 25 (“The lesbian and gay communities have been reluctant to discuss same-sex domestic violence for fear of validating negative stereotypes of same-sex relationships and detracting from the push for the legal recognition of such relationships.”).

batterers makes it a lot harder for men to get access to shelter.”<sup>172</sup> The absence of gender difference produces two related conceptual problems: “how to explain domestic violence without reference to gender roles and how to view it outside a hetero-normative frame.”<sup>173</sup>

This section began the conversation by identifying benefits to the domestic violence movement in moving beyond the strategy of containment. The next section explores the benefits to the feminist movement.

## *B. The Feminist Movement*

Moving beyond a strategy of containment stands to position the broader feminist movement with greater longevity and enduring relevance. Merely containing women’s violence risks stagnating and essentializing the domestic violence movement specifically and the feminist movement more broadly.<sup>174</sup>

### *1. Preserving the Movement’s Longevity*

The central positioning of domestic violence as a women’s issue premised on a gender binary provided important historical context and insight into the condition and experiences of women.<sup>175</sup> It may not, however, be enough on its own to endure and adapt into a next generation of law reforms to *end* gendered violence or to achieve gender equality. Understanding and acknowledging women’s acts of violence may paradoxically advance larger feminist initiatives.

While women’s victimhood served an important early purpose of achieving political identity and formation of the domestic violence movement, “the construction of [women’s] victimhood as a status linked to patriarchy” is problematic to gender equality.<sup>176</sup> It risks essentializing women as potential victims and men as potential perpetrators,<sup>177</sup> which is problematic to the overall feminist ideology.

What to do with women perpetrators in the *feminist* frame? Do we define them out of the domestic violence movement because they are perpetrators? If so, then what is to be done about the centrality of the domestic violence

172. Shwayder, *supra* note 162 (quoting Tre’Andre Valentine, Community Programs Coordinator, The Network/La Red).

173. Knauer, *supra* note 53, at 333.

174. Social movements are contextual. A social movement is framed within the “context or environment in which it develops, including an awareness of the opportunities and constraints it faces in a given field of action.” Fominaya, *supra* note 47, at 395.

175. Weissman, *supra* note 60, at 230 (describing the work of political scientist Nancy Fraser).

176. Weissman, *supra* note 60, at 231 (specifically concerned with the inattention given to socioeconomic structures). See generally Lynne N. Henderson, *The Wrongs of Victim’s Rights*, 37 STAN. L. REV. 937 (1995) (critiquing and considering the impact of victim’s rights approaches).

177. It “suggests that men are never subjected to intimate partner abuse and sexual violence.” Goldscheid, *supra* note 40, at 634.

movement to feminism? It might be okay to define women abusers out of the domestic violence movement, but are we comfortable defining their existence out of feminism entirely? Might acknowledging women as aggressors and controllers have a role consistent with feminism to achieve larger law reform goals?<sup>178</sup>

This issue is about much more than mere terminology of male-female. As a society, definitions of masculinity and femininity are changing dramatically. It is also about shifting popular conceptions of femininity generally. The popular teen fiction series, *The Hunger Games*, is a good example of these changing norms. The series positions its main character with equal opportunities for revolution against patriarchy in which she adopts the “masculine traits associated with power and heroism” as well as “strength, athleticism, and prowess at hunting.”<sup>179</sup> The series’ popularity comes, in part, from powerful depictions of gender non-conformity.

Shifting the conversation to understanding the experiences of women as domestic violence offenders actually stands to expand our understandings of gender hierarchies beyond black and white, male and female, to understanding larger intersections of race, class, and ethnicity. Feminist scholars, such as Leigh Goodmark, have previously advocated strongly for this directional shift. Goodmark concluded that the “time has come to reevaluate the legal system’s responsiveness to the complex and variable needs of women” particularly focusing on a need for intersectional responses that avoid essentializing.<sup>180</sup> Deborah Weissman has likewise argued that stripping out attention to socioeconomic factors from domestic violence has “narrowed the scope for addressing structural determinants of gender-based violence.”<sup>181</sup>

## 2. *Diffusing Gender Stereotypes*

Women have been systemically stereotyped as more empathetic and nurturing and men as more competitive and assertive throughout history.<sup>182</sup> These stereotypes have, in turn, been central to the social and political historical roles of men and women in public and private life.<sup>183</sup> Dominance feminists particularly came to frame domestic violence as the systemic subordination of women and called upon the state (police, prosecutors, lawyers,

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178. White & Kowalski, *supra* note 120, at 488.

179. Rachel Elfassy Bitoun, *The Political Message of The Hunger Games*, ARTIFICE (Aug. 3, 2014), <http://the-artifice.com/the-hunger-games-political-message>.

180. LEIGH GOODMARK, *A TROUBLED MARRIAGE* 4-5 (2012).

181. Weissman, *supra* note 60, at 231 (explaining that the causes of violence are varied and complex and are often interconnected with considerations of historic and structural context).

182. White & Kowalski, *supra* note 120, at 488-89.

183. *Id.* at 489.

and judges) to enter families to challenge men's domination and control of women.<sup>184</sup>

This framing led to terminology of "victims" and images of women as "passive, weak, and powerless" as dominance feminists framed women universally as "potential or actual victims."<sup>185</sup> Leigh Goodmark powerfully critiqued this approach arguing that this feminist approach has

shaped the legal response to domestic violence: excessively focused on physical violence rather than the totality of a woman's experience of abuse, concerned primarily with separating women from their partners, regardless of the effectiveness of such policies or the desires of individual women, and bound to stereotypes of women subjected to abuse that take power from individual women and validate intrusions on women's autonomy.<sup>186</sup>

The rhetorical shift from the word "victim" to "survivor" is a strong example of this move toward emphasizing agency and strength over passivity and pathology within the movement. Concerns emerged within the domestic violence movement that the term "battered women" and "victims" created a troublesome binary.<sup>187</sup> Feminists worried that women were losing their agency, their expression of assertiveness, and were "drown[ing] in the sea of degrees of powerlessness."<sup>188</sup>

In contrast, the language of survivor embraced more agency and invoked "images of strength and success."<sup>189</sup> This shift focused on "resistance and survival" and it "dr[ew] attention to the strength women display despite their experiences of victimization."<sup>190</sup> These efforts recognize the collective *strength* of womanhood.<sup>191</sup>

Eliminating stereotypes requires more work, even uncomfortable work. Women's full agency includes the autonomy to make bad decisions, even criminal ones.<sup>192</sup> Acknowledging women's violence could go further to reduce

184. GOODMARK, *supra* note 180, at 2-3.

185. *Id.* at 3.

186. *Id.* at 4.

187. Jennifer Dunn, "Victims" and "Survivors": Emerging Vocabularies of Motive for "Battered Women Who Stay," 75 SOC. INQUIRY 1, 14 (2005).

188. *Id.* at 14.

189. *Id.* at 15 (citation omitted).

190. *Id.* at 18 (citation omitted).

191. Verta Taylor & Nancy Whittier, *Analytical Approaches to Social Movement Culture: The Culture of the Women's Movement*, in SOCIAL MOVEMENTS AND CULTURE 163, 179 (Hank Johnston & Bert Klandermans eds., 1995).

192. See generally Weare, *supra* note 30 (critically questioning how labels applied to women who kill deny women their agency). "Typically the focus is on men who commit violence, however . . . [a]cknowledging women's agency solidifies the notion that women are indeed capable of violence through recognising their ability to make a semi-autonomous decision to commit violence acts . . ." *Id.* at 357.

stereotypes positioning women as emotional, subjective, and relational, and making space for women to express anger.<sup>193</sup>

This is consistent with longstanding transnational feminist critiques of American feminism. For example, the American public reacted with shock and dissonance when it learned that women were engaged in the sexualized torture of men at Iraq's Abu Ghraib prison. American reactions struggled with how and why women were involved in this. Basuli Deb critiqued the racial and ethnic implications of this perceived dissonance, stating that it reveals how American femininities sit below American masculinities but above Iraqi masculinities "enjoy[ing] . . . 'relational autonomy' over brown bodies that they torture."<sup>194</sup>

But sexual torture of Arab men by white women is also about the comparative sexual power of American women and Iraqi women, the latter being objects of control in an oppressive patriarchy from which American women are about to liberate them so that they can at least glimpse the joys of American womanhood.<sup>195</sup>

It is silencing and marginalizing of women perpetrators to only hear and see male victims in the conversation about women's violence. Bringing male victims under the umbrella of victim's services is critical, but it is only the beginning.<sup>196</sup> Addressing women as perpetrators who belong in feminist theory is a harder conversation, but a critical one to debunking festering stereotypes.

### 3. *Strengthening Other Skewed Standards*

Moving beyond the strategy of containment might also correct skewed and distorted legal standards beyond domestic violence. Mayo Moran's scholarship on gendered differences in the reasonably prudent person standard is a strong example of these collateral consequences in tort law. Moran explains how the reasonable person standard embeds acceptance for young boys who are dangerous in their play, imprudent, not responsible, ignore warnings, and engage in deception.<sup>197</sup> In contrast the playing girl is never granted a "normal girlish imprudence" in aligning her with the reasonably prudent person.<sup>198</sup> One case describes how a girl would be "vigilant and indefatigable in her care of a

193. Taylor & Whittier, *supra* note 191, at 178 (noting the work of Sisters of the Yam in working with African-American women to trade fear and shame for anger and pride).

194. Basuli Deb, *Transnational Feminism and Women Who Torture: Re-imag(in)ing Abu Ghraib Prison Photography*, 7 *POSTCOLONIAL TEXT*, no. 1, 2012, at 1, 11 (citation omitted).

195. *Id.* at 15.

196. See, e.g., Kimmel, *supra* note 17, at 1343-44 ("Compassion for victims of violence is not a zero-sum game. Reasonable people would naturally want to extend compassion, support, and interventions to all victims of violence.").

197. See Mayo Moran, *The Reasonable Person: A Conceptual Biography in Comparative Perspective*, 14 *LEWIS & CLARK L. REV.* 1233, 1246 (2010).

198. *Id.* at 1247.

helpless child; she would be more cautious to avoid unknown dangers; she would be more particular to keep within the limits of absolute safety when the dangers which threatened were such as only great strength and courage could venture to encounter.”<sup>199</sup> Moran highlights how gendered framings of “reasonableness” create a set of values held by a group and then sets non-conforming individuals aside as abhorrent.<sup>200</sup> Ignoring women’s acts of violence and aggression broadly suggests that these acts are abhorrent for women and innate for men.

The idea that women’s use of physical strength is not “reasonable” can also be seen in child abuse cases. For example, in *Gonzalez v. Santa Clara County Department of Social Services*, a mother challenged her inclusion on the Child Abuse Central Index because the court failed to properly consider her parental disciplinary privilege.<sup>201</sup> Both the mom and the dad in the case were worried about their 12-year-old daughter’s decline in academics and her increasing interest in gang culture. After other disciplinary measures were ineffective, the father began spanking her when she lied or failed to complete her required tasks. The father spanked her “with his hand only, only on the buttocks, fully clothed, and in a calm manner.”<sup>202</sup> On one day when the father was going to be home late, the father insisted that the mother should institute whatever punishment was necessary. The mother, however, had a hurt hand and could not use her hand. She instead used a wooden spoon. She gave her daughter “around five or six spanks on the bottom, one for each thing not done and for making excuses. [Daughter] was fully clothed during the spanking. She was not crying or screaming during the spanking.”<sup>203</sup> When bruises appeared and the daughter was sore at school, she revealed the spanking to her friends, who then encouraged her to report to school officials, which then launched an investigation.

The mother argued that she invoked the privilege of reasonable parental discipline at the administrative hearing. This privilege required her to prove that there was “(1) a genuine disciplinary motive; (2) a reasonable occasion for discipline; and (3) a disciplinary measure reasonable in kind and degree.”<sup>204</sup> The mother argued that she proved these things at the administrative hearing and that the court improperly failed to consider them. The court held that the “trial court refused to consider whether Mother’s conduct constituted

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199. *Id.* (quoting Mich. Cent. R.R. Co. v. Hasseneyer, 12 N.W. 155 (Mich. 1882)).

200. *Id.* See generally Caroline Forell, *What’s Reasonable?: Self-Defense and Mistake in Criminal and Tort Law*, 14 LEWIS & CLARK L. REV. 1401, 1432 (2010) (noting that “many factors can affect whether a legal decision-maker will find a belief or conduct to be reasonable,” such as “[t]ime and place” and “race and gender”).

201. *Gonzalez v. Santa Clara Cty. Dept. of Soc. Servs.*, 163 Cal. Rptr. 3d 110 (Ct. App. 2013).

202. *Id.* at 114.

203. *Id.* at 115.

204. *Id.* at 126.

reasonable parental discipline.”<sup>205</sup> This categorical rejection was reversible error.

The court went on to sua sponte conclude that the hearing officer failed to exercise his power to evaluate the evidence before him: “Insofar as he failed to perform that duty, he defeated the whole purpose of the proceeding.”<sup>206</sup> This very strong critique of the hearing officer underscores how flippant the court was with considering whether the mother could have imposed reasonable discipline.

This reflects how ignoring women’s violence and aggression might skew legal standards in other contexts.

#### 4. *Advancing Women's Political, Professional, and Social Participation*

Acknowledging and claiming women who commit acts of violence more broadly may also paradoxically open up space for accepting women’s full political, professional, and social participation. Aggression and violence cannot be stripped away from assertiveness and competitiveness in political and popular understandings. “[B]ecause aggression is assumed to be correlated with assertiveness and competitiveness, women conveniently are denied access to arenas in which these attributes are valued—not surprisingly, those most associated with power such as politics, business, and the military.”<sup>207</sup> Innumerable professional, political, and social examples exist where characteristics of power, control, and strength are valorized.<sup>208</sup> While domestic violence is the criminal exercise of those characteristics, to systemically conclude that women are not capable of wielding those characteristics illegitimately, paradoxically undermines perceptions of women’s competence in legitimate uses. That is not to valorize women’s violence or to accept a masculine standard and seek to conform, but to round out other projects seeking to reconceptualize autonomy in ways that are more inclusive.<sup>209</sup>

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205. *Id.* at 125.

206. *Id.* at 134.

207. White & Kowalski, *supra* note 120, at 480.

208. Relational feminist accounts have explored this and sought to re-appropriate a more nuanced understanding of autonomy. See generally MARILYN FRIEDMAN, *AUTONOMY, GENDER, POLITICS* 99 (2003) (describing how feminists have uncovered ways in which “close personal involvement and identification with others have been culturally devalued, in tandem with the devaluation of women, by comparison with the public world of impersonal relationships that men have traditionally monopolized”).

209. See generally *id.* Friedman describes how a “cultural understanding of autonomy needs to change if the concept is to be relevant for women.” *Id.* at 99. Autonomy traditionally is understood as “reflecting on one’s deeper wants, values, and commitments, reaffirming them, and behaving and living in accordance with them even in the face of at least minimal resistance from others.” *Id.* at 99-101 (noting that this concept is connected to “masculine-defined behavioral traits”). This concept could be more gender inclusive, however, if the social nature of autonomy is made more explicit so that autonomy is less antithetical to social relationships. *Id.* at 99. This includes “narratives of women who

Notably, aspects of the domestic violence movement and aspects of the broader women's movement emerged in the context of gendered pacifism. Women have been aligned with "peace and pacifism."<sup>210</sup> For example, the first woman ever elected to Congress, Jeannette Rankin, was elected on a strong pacifist platform.<sup>211</sup> Rankin "saw her womanhood as including that idea of pacifism."<sup>212</sup> The undertones of women as inherently pacifist or more peaceful than men still permeate public policy debates in critical ways.<sup>213</sup> That is not to say that pacifism should not also be reframed squarely as a marker of strength to be politically valued in its own right.<sup>214</sup> But to the extent an entrenched gender binary exists, that is, of course, a stereotype or a generalization about all women that complicates equality.<sup>215</sup>

There are political consequences to this framing, however, that compromise gender equality. Women's pacifism was understood, in turn, historically to undermine women's political participation. When Jeannette Rankin served in Congress, for example, her pacifism was used more broadly as a critique on women's political participation. The New York Times wrote: "Miss Rankin's vote is regarded, not as that of a pacifist, but rather as one dictated by the inherent abhorrence of women for war."<sup>216</sup> Anti-suffrage arguments emphasized the need for a "strong" and "safe" democracy, drawing upon gendered stereotypes of strength and protection.<sup>217</sup>

Not acknowledging and understanding women's violence further perpetuates the myth that women are inherently and universally more peaceful than men. It perpetuates harmful views that all women who associate with violent behaviors are either *not women* or are *not perpetrators*, but actually masked victims of male violence and control. This is a political blind spot.

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strive in paradigmatically or distinctively female situations against patriarchal constraints to express and refashion their deepest commitments and senses of self." *Id.* at 100.

210. Lucinda J. Peach, *An Alternative to Pacifism? Feminism and Just-War Theory*, 9 HYPATIA 152, 153 (1994).

211. Whitney Blair Wyckoff, *The First Woman in Congress: A Crusader for Peace*, NPR (May 18, 2011), <http://www.npr.org/2011/07/14/135521203/the-first-woman-in-congress-a-crusader-for-peace>.

212. *Id.*

213. See, e.g., Katha Pollitt, *This Just In: Women are Not All Pacifists*, NATION (Mar. 22, 2011), <http://www.thenation.com/blog/159378/just-women-are-not-all-pacifists> (critiquing a blog post expressing surprise that Obama's advisors pushed for a war against Libya and arguing that the underlying post "mobilizes a raft of misogynist tropes about castrating females, the dangers of petticoat government and the folly of expecting anything good to come out of gender equality").

214. See generally FRIEDMAN, *supra* note 209, at 100 (noting a feminist strategy to emphasize and value the social, countering the narrative that "cast[s] a masculine shadow over the concept" of autonomy).

215. Peach, *supra* note 210, at 153. See generally ROBIN WEST, *CARING FOR JUSTICE* (1997) (urging consideration of women's lived experiences as they differ from men to produce a theory of justice which incorporates women's voice).

216. Wyckoff, *supra* note 211.

217. See, e.g., *Women Condemn Suffrage Pacifism*, N.Y. TIMES, Nov. 23, 1917 (quoting women against suffrage seeking man-power in "control" to retain a "strong" government).

The most prominent international example of this can be seen in the role of social and media responses struggling to understand “female extremism” in the Islamic State of Iraq (ISIS).<sup>218</sup> Popular media has struggled with the question, “[W]hy would any women willingly get involved with ISIS?”<sup>219</sup> Conventional responses emphasize the “role of the oppressed in oppressing” and probe whether and why women are joining this group *by choice*.<sup>220</sup> These accounts highlight the horrific regime of violence and oppression endemic to ISIS rule.<sup>221</sup> This focus, of course, only further magnifies the question of “why women would voluntarily join this movement?”<sup>222</sup>

It is a law and policy blind spot to not contemplate women’s violence with more agency and purpose. Marginalizing women’s violence is harmful because it reflects strategies of either masked gender or masked victimization.<sup>223</sup> It yields conclusions that all women are masked victims who just do not know it yet. For example, one article explained that these women are “unaware that they will progressively lose their freedoms as they empower Islamism through their actions”<sup>224</sup> and another critiqued popular accounts that frame women as “cannon fodder in a man’s game, fighting foolishly for a movement that will not benefit them.”<sup>225</sup>

Alternatively, if women are framed as actual perpetrators, it masks their gender. When women are described in their capacity perpetuating or supporting acts of violence, they are often described as “female insurgents” or ISIS’s women or the mujajirit (“migrants”), language which paradoxically either fragments the women from the movement they are associated with or gives an

218. See, e.g., Jamaal Abdul-Alim, *ISIS 'Manifesto' Spells Out Role for Women*, ATLANTIC (Mar. 18, 2015), <http://www.theatlantic.com/education/archive/2015/03/isis-manifesto-spells-out-role-for-women/387049> (reporting that as many as 550 Western women have joined ISIS); Zahava Moerdler, *Women and ISIS: Debunking the Myth of Gender and Violence*, RIGHTS WIRE BLOG (Mar. 24, 2015), <http://rightswireblog.org/2015/03/24/women-and-isis-debunking-the-myth-of-gender-and-violence> (estimating that 600 Malaysian and 100 British and Australian women have traveled to ISIS territory).

219. Elena Veatch, *Women of ISIS: The Role of the Oppressed in Oppressing*, FOREIGN POL’Y J. (Dec. 12, 2014), <http://www.foreignpolicyjournal.com/2014/12/12/women-of-isis-the-role-of-the-oppressed-in-oppressing>.

220. *Id.* (explaining that some join ISIS for their own safety and security and others seek a sense of responsibility in the agenda).

221. Moerdler, *supra* note 218. ISIS indeed issued a troubling “Manifesto” on women. Dominant responses to this Manifesto highlight the propaganda-type nature of the writing and emphasize the oppressive frameworks that legitimize girls marrying at age nine, conclude that extended education for girls is “worthless,” and prefer “a woman to remain hidden and veiled.” Abdul-Alim, *supra* note 218.

222. Qanta Ahmed, *Who Are the Invisible Women Joining ISIS?*, FOX NEWS (Sept. 19, 2014), <http://www.foxnews.com/opinion/2014/09/18/unveiling-invisible-women-joining-isis.html> (“Regardless of what attracts them, women jihadists serve a fleeting purpose for ISIS.”).

223. *Id.* (“But even less attention has been given to women who choose to participate in ISIS as perpetrators, rather than as victims.”).

224. *Id.*

225. Nimmi Gowrinathan, *The Women of ISIS: Understanding and Combating Female Extremism*, FOREIGN AFF. (Aug. 21, 2014), <https://www.foreignaffairs.com/print/1071149>.

institutional possessory interest in the women.<sup>226</sup> This framing is revealing of a deep blind spot in law and policy. If women are fighters exercising agency, they are somehow not ISIS, but something different (“female insurgents”). If they are in ISIS due to oppression or victimization they are framed as women directly in their victimized state. Thus, gender is masked when they are fighters. This undermines the political nature of women.<sup>227</sup> It takes from the ISIS women the exact identity that they may have sought. It is critical to understand the “girl-power subculture” that underlies this political calling for certain young girls.<sup>228</sup>

Paradoxically, a quest for power and control may drive women’s enlistment. Some female violence needs to be understood as a tool to gain the institutional or systemic power directly that they have been denied. “[W]omen yearn to be entrusted with responsibilities in positions of authority in the midst of societies in which traditional values already restrict female autonomy.”<sup>229</sup> A study of the social media postings of women who migrated to join ISIS, for example, revealed that they were motivated by a binary of perceiving the world as against them or their faith; a desire to build a community based on an “ideologically pure state;” and a sense of individual action in creating this “new world order.”<sup>230</sup> The study authors state that the girls wage a “search for meaning, sisterhood and identity” when they travel.<sup>231</sup>

Many still judge presidential candidates based on their wartime experiences or their perceived ability to oversee the military.<sup>232</sup> This can often

226. Abdul-Alim, *supra* note 218 (“*female insurgents* have played integral roles” (emphasis added)).

227. Men do not have a unique gender claim to terrorist acts or violence and to conclude otherwise is naïve and problematic. See Deb, *supra* note 194, at 1 (“With this, a kind of naïve feminist assumption that perpetrating state violence is gender exclusive to men would give way to feminism that had to explore the dynamics of female on male violence.”). Women have played critical roles in ISIS and in other forms of terrorism. See, e.g., Elena Veatch, *Why Are Women Joining the Islamic State?*, FOREIGN POL’Y FOCUS (Jan. 9, 2015), <http://fpif.org/women-joining-islamic-state> (noting that women have “played integral roles in suicide bombings and other terrorist attacks in the Middle East”); Moerdler, *supra* note 218 (describing the role of women in the Nazi regime). ISIS created two paid female brigades of women ages 18-25 to serve as “morality police” and conduct inspections primarily. Veatch, *supra*.

228. See generally Katrin Bennhold, *Jihad and Girl Power: How ISIS Lured 3 London Girls*, N.Y. TIMES (Aug. 17, 2015), <http://www.nytimes.com/2015/08/18/world/europe/jihad-and-girl-power-how-isis-lured-3-london-teenagers.html> (describing this phenomenon from the perspective of Sasha Havlicek, a co-founder and chief executive of the Institute for Strategic Dialogue). “It’s a twisted version of feminism . . . a way to emancipate yourself from your parents and from the Western society that has let you down.” *Id.* (quoting Havlicek’s testimony).

229. Veatch, *supra* note 219.

230. Moerdler, *supra* note 218 (citing the work of Carolyn Hoyle, Alexandra Bradford, and Ross Frenett) (concluding that characterizing women in ISIS as passive bystanders or victims is a “gross misconception”).

231. Carolyn Hoyle et al., *Becoming Mulan? Female Western Migrants to ISIS*, INST. STRATEGIC DIALOGUE 13 (2015), [http://www.strategicdialogue.org/wp-content/uploads/2016/02/ISDJ2969\\_Becoming\\_Mulan\\_01.15\\_WEB.pdf](http://www.strategicdialogue.org/wp-content/uploads/2016/02/ISDJ2969_Becoming_Mulan_01.15_WEB.pdf).

232. John Nagl, Opinion, *Does Military Service Still Matter for the Presidency?*, WASH. POST (May 25, 2012), <https://www.washingtonpost.com/opinions/does-military-service-still-matter-for-the->

be associated with individuals having characteristics of strength and aggression and power and control. As one contributor to *Time Magazine* described it:

If we want our culture to recognize women's capacity for leadership and competition, it is hypocritical to deny or downplay women's capacity for aggression and even evil. We cannot argue that biology should not keep women from being soldiers while treating women as fragile and harmless in domestic battles. Traditional stereotypes both of female weakness and female innocence have led to double standards that often cause women's violence—especially against men—to be trivialized, excused or even (like Solange's assault on Jay Z) treated as humorous. . . . It is time to see women as fully human—which includes the dark side of humanity.<sup>233</sup>

This dissonance exists in U.S. military integration too. The gendered dissonance created by women in military leadership will plague women's meaningful integration.<sup>234</sup> Women were historically excluded from war and it is still largely a "male enterprise: fought by men, with and against other men, for male-defined purposes and ends."<sup>235</sup> Women have integrated the military in historic numbers, but are still occupying gendered roles.<sup>236</sup> Cultural norms still identify "men with war and soldiering" and "women with peace and mothering."<sup>237</sup> For women to rise to the highest levels, they must be seen as capable of wielding power and control effectively.

One case that reveals how feminism might have given voice to a different political, professional, and social vision of women is *United States v. Virginia*, ordering the admission of women to the Virginia Military Institute. Justice Ginsburg emphasized the statistically marginal number of women relevant to

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presidency/2012/05/25/gJQAAAMupU\_story.html ("Wars have given the United States many of its most important political leaders, and we can expect those who have led the country's sons and daughters in the sands of Anbar province and the mountains of the Hindu Kush to turn their sights to the highest office in the land in years to come.").

233. Young, *supra* note 16.

234. See, e.g., Dave Philipps, *Marine Commander's Firing Stirs Debate on Integration of Women in Corps*, N.Y. TIMES (July 12, 2015), <http://www.nytimes.com/2015/07/13/us/marine-commanders-firing-stirs-debate-on-integration-of-women-in-corps.html>.

235. Peach, *supra* note 210, at 152.

236. Women work in more administrative and support roles than men do within the armed services. See Catherine Toth, *Women and the Military*, in THE HANDBOOK OF WOMEN, PSYCHOLOGY, AND THE LAW 328, 329 (Andrea Barnes ed., 2005). Nearly fifty percent of female officers and enlisted service women fill administrative and support roles, often in health care and administration (while approximately twenty percent of male servicemen fill these roles). Jessica L. Cornett, *The U.S. Military Responds to Rape: Will Recent Changes Be Enough?*, 29 WOMEN'S RTS. L. REP. 99, 102 (2008). Only nine percent of "women officers are in tactical operations occupations, compared with forty-two percent of male officers." *Id.*

237. Peach, *supra* note 210, at 153 (noting that feminists have "challenged this traditional gendered dichotomy between war and peace").

the analysis, positioning them as similarly situated to their male peers.<sup>238</sup> “Some women, at least,” the Court said, “would want to attend the school if they had the opportunity.”<sup>239</sup> “[S]ome women are capable of all of the individual activities required of VMI cadets.”<sup>240</sup> The Court criticized—and ultimately struck down—the Virginia Women’s Institute for Leadership because it had wrongly focused on “most women” after the Task Force determined that a military model would be “wholly inappropriate” for the women’s school.<sup>241</sup>

The dominant narrative repeated throughout the opinion was that the women who sought entrance to this highly physical adversative program were statistically marginal among women.<sup>242</sup> In part, because the case was brought by the Department of Justice on behalf of a minor, the name, motivations, and experiences of the plaintiff are lost in all public accounts of the case.<sup>243</sup> What did the complainant hope to achieve with a VMI education? What job did she seek? How did this align and connect with other aspects of her femininity?<sup>244</sup> Importantly, it was not just that some women *wanted* to attend and some women *could* meet the physical requirements,<sup>245</sup> critical facts to which Virginia conceded.<sup>246</sup> As many other feminist scholars have critiqued, that approach

238. Justice Ginsburg concluded that “generalizations about ‘the way women are,’ estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.” *United States v. Virginia*, 518 U.S. 515, 550 (1996). Even Chief Justice Rehnquist concurred when he wrote, “But the State should avoid assuming demand based on stereotypes; it must not assume *a priori*, without evidence, that there would be no interest in a women’s school of civil engineering, or in a men’s school of nursing.” *Id.* at 565-66 (Rehnquist, C.J., concurring).

239. *Id.* at 523 (majority opinion) (quoting the district court opinion).

240. *Id.* (quoting the district court opinion).

241. *Id.* at 526-27 (quoting the Task Force, which comprised experts in educating women, and instead recommended a “cooperative method which reinforces self-esteem”).

242. Justice Scalia wrote that:

Only the amorphous “exceedingly persuasive justification” phrase, and not the standard elaboration of intermediate scrutiny, can be made to yield this conclusion that VMI’s single-sex composition is unconstitutional because there exist several women (or, one would have to conclude under the Court’s reasoning, a single woman) willing and able to undertake VMI’s program.

*Id.* at 573 (Scalia, J., dissenting).

243. The plaintiff was a northern Virginia high school student. She originally submitted a complaint to the Department of Justice. See Katharine T. Bartlett, *Unconstitutionally Male?: The Story of United States v. Virginia*, in *WOMEN AND THE LAW STORIES* 133, 133 (Elizabeth M. Schneider & Stephanie M. Wildman eds., 2011).

244. See *id.* at 134 (“Like the men who sought admission to VMI, the would-be female applicant may have been hungry for the intensity of the physical and mental challenge and the leadership opportunities. She may have longed for membership in a tightly knit community, bonded through the shared grueling misery VMI experience.”).

245. *Virginia*, 518 U.S. at 525 (“The parties agreed that ‘some women can meet the physical standards now imposed on men,’ and the court was satisfied that ‘neither the goal of producing citizen soldiers nor VMI’s implementing methodology is inherently unsuitable to women.’”).

246. The district court had likewise acknowledged evidentiary support for these determinations: “[T]he VMI methodology could be used to educate women and, in fact, some women . . . may prefer the VMI methodology to the VWIL methodology.” *Id.* at 527-28 (quoting *United States v. Virginia*, 852 F. Supp. 471, 481 (1994)). The district court famously concluded: “If VMI marches to the beat of a drum,

merely leaves women judged on the same male standards.<sup>247</sup> Rather, the case presented a missed opportunity to explain why *women* would seek this level of physical and aggressive accomplishment and to position those goals as squarely within the spectrum of women's identities.

What might be even more striking is to consider how this can create political dissonance to be used against women. This phenomenon can be seen in the "failure to protect" laws, which construct a narrative of mothering that is selfless.<sup>248</sup> Through this framework, "[b]attered women, then, who struggle for individual survival, as well as for the survival of their children, are bad mothers and transformed into cultural pariahs."<sup>249</sup> A cultural "fault line" is created whereby "[m]others are responsible for harms to children."<sup>250</sup>

This juxtaposition is particularly striking in *Gonzales v. Carhart*, where the Supreme Court upheld the ban on so-called "partial-birth abortions."<sup>251</sup> The Court explained that this ban was good for women because of the regret they might experience, in part, after learning of the specific nature of the procedure.<sup>252</sup> The procedure, critically, is depicted in violent terms. The Court wrote:

It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form.<sup>253</sup>

The case thus works to marginalize and exceptionalize the medical decision-making of women using the dissonance of women's knowing participation in

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then Mary Baldwin marches to the melody of a fife and when the march is over, both will have arrived at the same destination." *Id.* (quoting *Virginia*, 852 F. Supp. at 484).

247. *See id.* at 525 (critiquing the use of stereotypes to justify pedagogy).

248. Miccio, *supra* note 14, at 93.

249. *Id.*

250. *Id.*

251. *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007).

252. *Id.* at 159-60.

253. *Id.* The Court further presumed that the nature of the procedure would compromise meaningful informed consent.

In a decision so fraught with emotional consequence some doctors may prefer not to disclose precise details of the means that will be used, confining themselves to the required statement of risks the procedure entails. From one standpoint this ought not to be surprising. Any number of patients facing imminent surgical procedures would prefer not to hear all details, lest the usual anxiety preceding invasive medical procedures become the more intense. This is likely the case with the abortion procedures here in issue.

*Id.* at 159; *see, e.g.*, Nat'l Abortion Fed'n v. Ashcroft, 330 F. Supp. 2d 436, 467 (S.D.N.Y. 2004) ("Most of [the plaintiffs'] experts acknowledged that they do not describe to their patients what [the D&E and intact D&E] procedures entail in clear and precise terms."), *aff'd in part sub nom.* Nat'l Abortion Fed'n v. Gonzales, 437 F.3d 278 (2d Cir. 2006), *vacated*, 224 F. App'x 88 (2d Cir. 2007).

this act as a primary tool.<sup>254</sup> Strongly juxtaposed to the language of the procedure, is language of women as *innately* nurturing. The Court famously stated that: “Respect for human life finds an ultimate expression in the bond of love the mother has for her child.”<sup>255</sup>

Moving beyond a strategy of containment may also advance women’s full participation in recreational spaces too, like sport and gaming.<sup>256</sup> “The very nature of sports . . . is associated with core tenets of masculinity—physicality, aggression, competition, and winning.”<sup>257</sup> Serena Williams has sparked this conversation in tennis, as have other women athletes in highly competitive sports.<sup>258</sup> Williams describes candidly the challenges of how she has learned to embrace her muscular powerful frame, but noted the dissonance that women athletes experience when strength and power are not dominantly associated with femininity.<sup>259</sup> As Joanna Grossman and Deborah Brake conclude, “[w]hile female athletes have made great strides under Title IX, their success has done little to change the masculine culture of sport.”<sup>260</sup> Notable to Title IX, many critics actually express a disfavor for women’s competitive sports *because of* the lack of comparable *physical* competition as seen in men’s sports.<sup>261</sup>

254. See generally Maya Manian, *The Irrational Woman: Informed Consent and Abortion Decision-Making*, 16 DUKE J. GENDER L. & POL’Y 223 (2009) (critiquing the “woman-protective” reasoning of *Gonzales* which undermines women as competent medical decision-makers).

255. *Gonzales*, 550 U.S. at 159.

256. Within popular online gaming cultures, in which women might role-play as combatants and aggressors, women are similarly marginalized and the culture remains heavily masculinized. “Women within the hardcore gaming public are given tightly bound roles to play and punished for stepping outside of them.” Anastasia Salter & Bridge Blodgett, *Hypermasculinity & Dickwolves: The Contentious Role of Women in the New Gaming Public*, 56 J. BROADCASTING & ELECTRONIC MEDIA 401, 411 (2012). These roles include women as “sex object, exemplified by booth babes and services that offer virtual ‘dates’ with attractive girl gamers, and women as invisible . . .” *Id.* Because of the masculinized world of technology and gaming, “the silencing of women and invisibility of women in these parallel publics is unsurprising.” *Id.* at 413.

257. Joanna L. Grossman & Deborah L. Brake, *Playing “Too Womany” and the Problem of Masculinity in Sport*, VERDICT (Sept. 17, 2013), <https://verdict.justia.com/2013/09/17/playing-too-womany-and-the-problem-of-masculinity-in-sport>.

258. See, e.g., Marissa Payne, *Ronda Rousey Expertly Dismisses Critics Who Think Her Body’s Too Masculine*, WASH. POST (July 31, 2015), <https://www.washingtonpost.com/news/early-lead/wp/2015/07/31/ronda-rousey-expertly-dismisses-critics-who-think-her-bodys-too-masculine/> (explaining that Ronda Rousey, a UFC fighter, is unapologetic about her strength and power in her sport).

259. See, e.g., Zeba Blay, *When We Attack Serena Williams’ Body, It’s Really About Her Blackness*, HUFFINGTON POST (July 13, 2015), [http://www.huffingtonpost.com/entry/serena-williams-policing-of-black-bodies\\_55a3bef4e4b0a47ac15ccc00](http://www.huffingtonpost.com/entry/serena-williams-policing-of-black-bodies_55a3bef4e4b0a47ac15ccc00) (“Williams is simultaneously sexualized and caricatured, othered and exoticized. Her body is a representation of her athletic skill. But rather than being celebrated, it’s been scrutinized mercilessly, turned into a kind of spectacle for white amusement.”); Ben Rothenberg, *Tennis’s Top Women Balance Body Image With Ambition*, N.Y. TIMES (July 10, 2015), <http://www.nytimes.com/2015/07/11/sports/tennis/tennis-top-women-balance-body-image-with-quest-for-success.html> (“For many, perceived ideal feminine body type can seem at odds with the best physique for tennis success.”).

260. Grossman & Brake, *supra* note 257.

261. *A Gentleman’s—and Lady’s—Game for Ruffians*, WOMEN’S MEDIA CTR. (Apr. 23, 2010), <http://www.womensmediacenter.com/blog/entry/a-gentlemans-and-ladys-game-for-ruffians>.

Women who are aggressive in competitive sport may also find their aggressions pathologized or be compelled to apologize. One study, for example concluded that 73% of women athletes engaged in “‘apologetic behaviors’—stereotypically feminine conduct such as cultivating a girlie appearance, apologizing for being aggressive and hanging out with men to emphasize their heterosexuality—to deflect prejudice.”<sup>262</sup>

When the University of Louisville’s Mariya Moore committed a flagrant foul against her opponent in the NCAA Women’s Basketball Tournament, attacks were immediately launched against her, not just for her excessive aggression in the sport, but for her character more broadly.<sup>263</sup> Moore tweeted an apology to the player directly with an explanation that the “[e]motions and intensity of the game got the best of me it was very physical and scrappy.”<sup>264</sup> Notably, it was the only flagrant foul for the team the entire season, but it compelled a news conference apology to the other team and to Louisville fans.<sup>265</sup> Yet one can only imagine what competitive sports would be like if male players had to address each flagrant foul with personal apologies and statements by the coach and player in press conferences to defend their individual character!

An article in *Psychology Today* titled *Aggressive Athletes: Out of Control and Unapologetic* reveals this point further. The title suggests the story is about “athletes” in a gender neutral frame, but actually only describes an isolated example of a collegiate soccer player, Elizabeth Lambert aggressively punching, kicking, shoving, and elbowing her opponent.<sup>266</sup> Lambert explained that it was “a game” and that “[s]ports are physical.”<sup>267</sup> She questioned whether the media unfairly targeted her because she was a woman and “[i]t’s more expected for men to go out there and be rough.”<sup>268</sup> After Lambert apologized in the *New York Times*, the *Psychology Today* author blasted Lambert for issuing an apology that was “scripted, hollow, insincere, and devoid of genuine remorse,” querying, “How many times do you see a player whipped to the ground by her hair?”<sup>269</sup> Yet his disdain with hair pulling is a distinctly gendered

262. Shannon Proudfoot, *Female Athletes Feel the Need to ‘Apologize’ for Talent*, CANWEST NEWS SERV., July 29, 2009.

263. Steve Jones, *U of L’s Mariya Moore Apologizes for Flagrant Foul*, COURIER J. (Mar. 22, 2015), <http://www.courier-journal.com/story/sports/college/louisville/2015/03/22/louisville-womens-player-mariya-moore-apologizes-flagrant-foul-byus-makenzi-morrison-ncaa-tournament-game/25183113> (quoting the coach concluding that, “Fans on Twitter and analysts were too quick to pass judgment on Moore’s character”).

264. *Id.*

265. *Id.*

266. Jared DeFife, *Aggressive Athletes: Out of Control and Unapologetic*, PSYCHOL. TODAY (Nov. 19, 2009), <https://www.psychologytoday.com/blog/the-shrink-tank/200911/aggressive-athletes-out-control-and-unapologetic>.

267. *Id.*

268. *Id.*

269. *Id.*

framing of aggression within professional sports targeting women. The author questions the appropriateness of Lambert's suggestion that the media was harder on her because she was a woman. In response, he cited examples of male athletes who also used aggression.<sup>270</sup> Notably his examples of male aggression were acts of aggression that occurred *off the field*, and he described two of the actions as "sucker punching" an opponent, a term that suggests that the physical act of aggression was not the problem, but rather the lack of direct male physical engagement.<sup>271</sup> While the article masquerades as a story about sports and aggression, it is actually attempting to uniquely pathologize and apologize for women's acts of aggressions in sport.<sup>272</sup>

### CONCLUSION

Domestic violence is indeed gendered and complex. It is both individualized and systemic. It has critical shared underpinnings, yet it is different in every manifestation.<sup>273</sup> It is time to consider whether it is too myopic to ignore female perpetrators. It is both "possible and politically necessary to acknowledge that some women use violence as a tactic in family conflict while also understanding that men tend to use violence more instrumentally to control women's lives."<sup>274</sup>

There are real reasons to pause and ask whether the movement is stagnating in its efforts to *end* violence against women.<sup>275</sup> It is time to self-assess critically the efficacy and trajectory of the movement.<sup>276</sup> For decades, the movement has worked to train family court judges, lawyers, police, and advocates.<sup>277</sup> Yet, the movement still faces incredible obstacles presented by hostile judges, uncooperative police, and a disbelieving public.<sup>278</sup> Our modern approach has led to a high stakes game of "whack-a-mole" whereby advocates

270. *Id.*

271. *Id.*

272. *Id.* (noting a phenomenon of narcissistic rage, but not clearly linking the phenomenon to the acts described in the article).

273. *See, e.g.,* HUNTER, *supra* note 37, at 25 (describing how female-female violence "has a different social meaning, and receives different responses to male-female violence").

274. Kimmel, *supra* note 17, at 1355.

275. *See, e.g.,* Weissman, *supra* note 60, at 229 ("Efforts by feminists and the domestic violence movement to challenge prevailing power hierarchies and improve the condition of women through over-reliance on the criminal justice system have, in fact, contributed to a skewed understanding of domestic violence."); Max D. Siegel, Note, *Surviving Castle Rock: The Human Rights of Domestic Violence*, 18 CARDOZO J.L. & GENDER 727, 750 (2012) ("In its current form, the American response to domestic violence is a troubling violation of international standards for human rights.").

276. *See, e.g.,* Sack, *supra* note 26, at 1721 ("[W]e need to face up to the battered women's advocates' critique and address it with progressive strategies that will strengthen the battered women's movement.").

277. Schneider, *supra* note 12, at 358.

278. *Id.* at 359, 362 ("There are still tremendous misunderstandings concerning the dynamics of abuse among lawyers, judges, professionals, and laypeople, and a deep resistance to seeing intimate violence as a multifaceted problem.").

try to train new individuals, intervene where misunderstandings emerge, and responsively try to move relief measures forward. This may be an effective approach to making existing systems work. It may not, however, be an effective strategy to *ending* violence against women.<sup>279</sup>

Within our communities individually and our nation as a whole, vast structural changes have occurred to which the domestic violence movement might align and adapt and evolve. Are there ways, for example, to deliver services within the context of a “sharing economy” that might lift up communities and allow for more community-specific service provision?<sup>280</sup> How do we move toward a stronger model of state accountability within communities?<sup>281</sup> How do the goals of the domestic violence movement align with broader conversations about police and community relations?<sup>282</sup>

This conversation begins with moving beyond the “third rail” status of women’s acts of violence in feminism. Women’s violence has historically been marginalized and apologized in problematic ways. The feminist movement has a powerful role to play debunking stereotypes underlying gendered violence and gender equality and propelling the movement forward consistent with modern understandings of gender.

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279. See generally Ramsey, *supra* note 99 (arguing that the government has failed to prevent and punish domestic adequately for more than two centuries, not due to its refusal to intervene, but its refusal to engage in effective interventions).

280. In San Francisco, for example, organizations have challenged outdated limitations on residential property rentals. New legislation seeks to allow residents to rent out their houses for up to ninety days per year. Joey Cosco, *Airbnb Is Trying to Change San Francisco Laws About Temporary Housing*, BUS. INSIDER (Aug. 7, 2014), <http://www.businessinsider.com/airbnb-change-san-francisco-laws-temporary-housing-lobby-2014-8>. Such legal and social shifts could open up powerful new ways to respond to domestic violence in our communities beyond the single shelter model.

281. See, e.g., G. Kristian Miccio, *The Death of the Fourteenth Amendment: Castle Rock and Its Progeny*, 17 WM. & MARY J. WOMEN & L. 277, 320 (2011) (advocating greater accountability within our public policy responding to battered women and children “regardless of the political cost”).

282. See generally Goodmark, *supra* note 110 (considering whether a militarized police force can adequately respond to domestic violence).

