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Examining Domestic Violence as a State Crime: Nonkilling Implications

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Examining Domestic Violence as a State Crime: Nonkilling Implications

Laura L. Finley
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Summary *Domestic violence has been considered one of the worst human rights problems in the world today. Numerous international and regional treaties and agreements oblige states to enact legislation to protect victims, to hold batterers accountable, and to provide services to those who have suffered. This paper examines states' failure to do so as examples of state crime. Utilizing a human rights framework allows states to better meet this obligation and to move toward a nonkilling paradigm as it relates to domestic violence.*

Domestic violence is one of the most pervasive human rights violations across the globe. Estimates are that one-third of the world's women will endure an abusive relationship (UN Commission on the Status of Women, 2000). A 2005 study of ten countries by the WHO found extremely high rates of abuse, and determined that violence against women by an intimate partner is a major factor in other health concerns. Women are at greater risk in the home than anywhere else (Garcia-Moreno, Jansen, Ellsberg, Heise, & Watts, 2005).

In 2006, UN Secretary General Kofi Annan issued a study on violence against women and prompted the General Assembly to discuss the issue. Annan declared violence against women as "perhaps the most shameful human rights violation" and "perhaps the most pervasive" (Shabazz, 2006). As shock-

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ing as these statistics are, most experts agree that they underestimate the true nature of the problem. Most studies are based on police reports, thus all those incidents not reported to law enforcement go uncounted. Additionally, police often use definitions of domestic violence that fail to incorporate non-physical incidents (Durose, 2005).

Often, domestic violence is explained as solely an individual matter. That is, individual batterers choose to abuse their partners, and it is those individuals that must be held legally accountable. This individual focus also emphasizes the need for services for those who have been victimized. While it is invariably true that individual abusers must be held accountable and their victims must receive assistance, this approach generally ignores the state's responsibilities for ensuring the protection of women. That is, once laws are enacted, it is as if the state's obligation is done and the responsibility lies with victims to report the abuse to authorities who will take it from there. As Stark (2007, 2009) explained, even when laws protecting victims are enacted, they are generally not useful in addressing non-physical forms of abuse, what he calls "coercive control." A major step toward better state response to domestic violence is to see it as a human rights issue (Libal & Parekh, 2009; Stark, 2009). As Stark (2009) explained, "although coercive control occurs in the private sphere, typically with little or no government collusion, it nonetheless merits classification as a human rights violation because of its broader political context, systemic roots, gendered construction, the extent to which it exploits preexisting inequalities, and particularly because of its consequences, the denial of equal rights of citizenship" (1521).

According to international human rights agreements, states have a duty to not only respond appropriately to domestic violence but also to take action to prevent it. In the Americas, this duty can be found in the American Declaration on the Rights and Duties of Man, among other places. The United Nations Committee on the Elimination of Racial Discrimination asserts that violence against women is a violation of human rights and that states are obligated to protect and provide access to justice for victims, including women of color, who

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face additional barriers (Domestic Violence and Access to Justice, 2008; Libal & Parekh, 2009).

The Inter-American Commission on Human Rights (IACHR) recently recognized this duty when they decided to hear the case of Jessica Gonzalez. Gonzalez's three children were kidnapped and killed by her abusive husband, despite her multiple efforts to get assistance from the Castle Rock, Colorado police. The U.S. Supreme Court held that the wording of the Colorado statute left room for the police tradition of discretion that coexisted with mandatory arrest policies. Lordi (2006) explained, "For the U.S. Supreme Court, mandatory, very simply, did not mean mandatory" (341). Ester Soler, President of the Family Violence Prevention Fund, called the Supreme Court's ruling "a serious blow," and argued that the court "is allowing gross negligence to go completely unpunished" (Roberts, 2009). Police, judges, and other criminal justice personnel are many times inadequately trained and thus do not understand the phenomenon of domestic violence well enough to provide appropriate interventions. Research shows that U.S police officers still treat domestic violence informally, sometimes failing to even produce a report of the incident. This is especially true when the accused is an officer. Allegations of domestic violence are rarely included in an officer's performance evaluation, and in many cases, accused officers are promoted.

Only 89 countries have legislation officially prohibiting domestic violence (Murray, 2008). Other countries have appropriate legislation but fail to use it

Immigrants who are not native English speakers are often unable to communicate effectively when seeking restraining orders or in other court proceedings because of a shortage of appropriately trained interpreters (Hass, Amarr & Orloff, 2006). These problems go beyond any individual officer or department but are systemic in nature and are related to how domestic violence is perceived and understood (Stark, 2007, 2009).

It is not just the U.S., however, that fails to adequately address violence against women. Most states are failing in their response and prevention efforts, to tremendous detriment. Some countries still lack appropriate laws through which they can protect victims and hold batterers accountable. Only 89 countries have legislation officially prohibiting domestic violence (Murray, 2008). Other countries have appropriate legislation but

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fail to use it. Corruption of some police in Pakistan, for example, means that prosecutions are rare, and convictions even rarer.

In some cases, it seems as though states have abdicated their responsibility for addressing violence against women by shifting the burden to non-profit organizations or non-governmental organizations (NGOs). While non-profits and NGOs have developed some very useful responses—from shelters to counseling and even some prevention programming—many times they are inadequately prepared to respond as well. In some cases, they become a “shadow state” by which the state, through the awarding of funding, still essentially controls the provision of services yet does not take full responsibility (Gilmore, 2007). Further, there simply are not enough non-profits or NGOs offering the needed services. Although it is clear that abuse is exacerbated by economic problems like the current global recession, nations and states are reducing the resources devoted to assisting victims. For instance, California recently cut at least \$2 million from their state budget for 94 domestic violence shelters (Urbina, 2009).

This paper explores the failure of states to adequately respond to domestic violence and to enact appropriate prevention methods, showing how these failures can be viewed as state crimes. State crime occurs when the state acts against its own citizens or the citizens of another country during the course of a conflict, or when the state fails to act when it is obligated to do so (Kramer, 1994; White, 2008). Green and Ward (2004) define state crime as “state organizational deviance involving the violation of human rights” (2).

Criminologists began to examine state crime in the late 1980s (Chambliss, 1989). Recent work has focused on explaining war crimes, genocides, and crimes against humanity as examples of state crime (Kramer & Michalowski, 2005; Mullins, 2009; Mullins & Rothe, 2008; Smeulers & Haveman, 2008; Rothe & Mullins, 2008; Rothe, Mullins, & Sandstrom, 2008). This chapter expands the growing body of literature in critical criminology in that it highlights state failure to respond, not just its overt action, as being problematic.

The chapter concludes with recommendations for addressing the problem of domestic violence as a human rights issue.

State crime occurs when the state acts against its own citizens or the citizens of another country during the course of a conflict, or when the state fails to act when it is obligated to do so

This type of paradigm shift is required in creating a nonkilling world. "Nonkilling refers to the absence of killing, threats to kill, and conditions conducive to killing in human society" (Evans, 2009: 15). Addressing state complicity in domestic violence is an essential component of creating a nonkilling world, in that the state currently is allowed to kill, either by permission or omission.

Scope and Extent of Domestic Violence

Addressing state complicity in domestic violence is an essential component of creating a nonkilling world, in that the state currently is allowed to kill, either by permission or omission

In 2005, the World Health Organization conducted the first major global comparison of domestic violence, collecting data from 24,000 women in ten countries (Bangladesh, Brazil, Ethiopia, Japan, Peru, Namibia, Samoa, Serbia and Montenegro, Thailand, and the United Republic of Tanzania). Results showed that, in some countries, more than 70% of women experienced abuse. Prior to the 2005 study, a 1999 report from the Center for Health and Gender Equity found the following rates of adult women being physically assaulted by partners: Ethiopia, 45%; Nigeria, 31%; South Africa, 29%; Bangladesh, 47%; India, 40%; New Zealand, 35%; Papua New Guinea, 67%; Netherlands, 21%; Turkey, 58%; United Kingdom, 30%; Barbados, 30%; Mexico, 27%; Egypt, 34%; and Canada, 29% (Murray, 2008). Almost 50 percent of women in the England and Wales have experienced domestic violence, stalking, or sexual assault (Walby & Allen, 2004). In India, a study by the International Center for Research on Women found approximately 45% of women had been abused by their husbands (Majumdar, 2003). Two-thirds of women in Iran have suffered from domestic violence at least once in their lives (DiBranco, 2009). In Afghanistan, 87 percent of women report being victims of domestic violence (DiBranco, 2009). In Kyrgyzstan, groups of men kidnap young girls, some only twelve years old, and take them to the homes of men whom they are to wed. The abductor's family then exerts pressure on the girl and her family to "consent" to the marriage. Many times, the abducted girl is immediately raped so that she will feel dirtied and unable to return to her family (Reconciled to Violence, 2006).

Examining Domestic Violence as a State Crime

The U.S. Department of Justice has estimated that between one quarter and one third of women will be the victims of domestic violence. Women of color are particularly at risk for abuse, with studies showing African American women endure 35% more abuse than Caucasian women. These women face additional barriers in getting help, including racially discriminatory systems. Native American women experience the highest rates of violence of any group in the U.S, according to data from the Department of Justice. Native women are the victims of violence crime three and a half times more often than the national, average (Bunghalia, 2001; Maze of Injustice, 2008; Perry, 2004).

The researchers who authored the 2005 WHO report found that abuse had lasting effects. Victims were twice as likely as non-victims to suffer poor health, including injuries, pain, dizziness, mental health problems, and miscarriages (Murray, 2008). An estimated 37% of women seeking attention at emergency rooms in the U.S had been injured by an intimate partner, according to a 2000 study (Murray, 2008). Domestic violence is often lethal. An estimated 1,400 women in the U.S. are killed from domestic violence annually, a shocking number. The Centers for Disease Control (CDC) considers domestic violence to be among the most dangerous forms of gender-based violence, and in the U.S., more women are injured from domestic violence than from car accidents, rapes, and muggings combined (Murray, 2008).

In other countries, death rates from domestic violence are far higher. For instance, approximately 14,000 women die each year from abusive relationships in Russia (Murray, 2008). South Africa is said to have the highest global rates of domestic and sexual violence against women, which contributes to the spread of HIV/AIDS (Onyejekwe, 2004). In India, an estimated 5,000 women are killed each year from honor killings alone (Murray, 2008). A young girl may be murdered by her own family members, typically a father or brother, if she is perceived to have dishonored the family through adultery or even flirting (Murray, 2008). The UN Commission on Human Rights has called honor killings "one of history's oldest gender-based crimes." It is estimated that two-thirds of all murders in the Gaza Strip and West Bank in 1999 were honor killings (Murray, 2008). In Jordan, an

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estimated 25 women each year are killed in honor killings, one of the highest per capita rates in the world (Soussi, 2005).

The non-governmental organization Human Rights Commission of Pakistan (HRCP) found a reported 286 women murdered in honor killings in Punjab province alone in 1998. Methods of honor killing vary; in Sindh, *kari* and *karo* (meaning “black woman: and “black man”) are hacked into pieces by axes and hatchets, usually in public. The organization’s Special Task Force for Sindh province received 196 cases of *karo-kari* killings in 1998, with 255 people murdered. Shootings are more common in Punjab and are more likely carried out in private. It is most often the husbands, fathers, or brothers of the woman concerned who carries out the killing (Pakistan: Honour Killings of Girls and Women, 1999). Amnesty International (1999) noted, “The perception of what defiles honour has become very loose. Male control extends not just to a woman’s body and her sexual

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behavior by to all of her behavior, including her movements and language. In any of these areas, defiance by women translated into undermining male honour. Severe punishments are reported for bringing food late, for answering back, for undertaking forbidden family visits.

Standards of honour and chastity are not applied equally to men and women, even though they are supposed to. Surveys conducted in the North West Frontier Province and in Balochistan

found that men often go unpunished for ‘illicit’ relationships whereas women are killed on the merest rumour of ‘impropriety’”(5). For instance, Ghazala was murdered by her brother in Joharabad, Punjab province, when he set her on fire on January 6, 1999. Her burned body lay unattended on the street for two hours afterwards, as passersby did not want to get involved. Her brother murdered her because her family suspected she was having an “illicit” relationship with a neighbor. Samia Sarwar’s mother, a doctor, facilitated her daughter’s honor killing when in April 1999 Samia sought a divorce from her abusive husband. News reports indicate that the public overwhelmingly supported the killing. Sher Bano was murdered outside of a courthouse in Peshawar. She had eloped with a man she wanted to marry and was arrested on charges of *zina*. Her brother shot her dead after

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submitting her bail application in court on August 6, 1997 (Pakistan: Honour Killings of Girls and Women, 1999).

Although it occurs most frequently in the Middle East, honor killings have occurred in Bangladesh, Brazil, Ecuador, Egypt, Uganda, Turkey, and even in the United States (Murray, 2008). The governments of Sweden and Great Britain have expressed increasing concern about honor killings among immigrants. In June 2004, authorities in England and Wales were investigating one hundred murders they thought could be honor killings (Murray, 2008).

Dowry deaths—when in-laws will harm a bride because her family did not present an adequate dowry or because the groom does not approve of the bride—also occur in India and parts of South Asia. An estimated 6,000 women were killed from dowry deaths in India in 1997 alone. More than a dozen women die each day in what are often called “kitchen fires,” as families will attempt to cover up the true cause of death (Murray, 2008). Women may also suffer from acid attacks. In Bangladesh, 315 acid attacks were reported in 2002 (Murray 2008).

Beyond “A Private Matter”

Historically, domestic violence has been viewed as a private, family matter. It wasn't until the 1970s that states began enacting laws specifically prohibiting abuse by intimate partners. Every state in the U.S. enacted legislation authorizing protective orders for victims of domestic violence by 1989, starting with Pennsylvania and DC in the 1970s. This type of legislation has received widespread support as a means to protect victims. Every state, as well as the federal government, has passed full faith and credit provisions requiring recognition of civil protection orders issued in other states, and the 1994 Violence Against Women Act specifically recognized the practice as being effective at protecting women. Additionally, the U.S. Department of Justice only issues grants to programs demonstrating a commitment to protective orders, a sign that they recognize the orders as a critical element in keeping women safe (Escobido, 2005).

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The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966 and entered into force in 1976, requires member states to take steps to maintain gender equality and to protect people from victimization. In 1993, the United Nations Declaration on the Elimination of Violence Against Women acknowledged that violence against women is a violation of human rights. The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) does not specifically address domestic violence, but the committee charged with overseeing CEDAW, the Committee on the Elimination of Discrimination Against Women, was the first intergovernmental human rights organization to equate violence in the home with a denial of human rights and to recommend states take preventive measures. The Committee on the Elimination of Discrimination Against Women also explained that member nations may be responsible for private acts of abuse if they fail to exercise preventative programs, to respond effectively, and provide compensation to victims (Domestic Violence and Access to Justice, 2008).

All major countries in the Organization of American States (OAS) have ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women

Article 4 of the Declaration on the Elimination of Violence against Women articulates that states must exercise due diligence to prevent and investigate acts of violence, whether those acts are perpetrated by the state or by private individuals. It further says that states must develop "penal, civil, labour and administrative sanctions" in their domestic legislation to redress the wrongs caused to women who are subjected to violence.⁶³ Similarly, paragraph 124(d) of the Beijing Platform for Action (BPfA), adopted by the Fourth World Conference on Women, calls for states to take measures to ensure that women subjected to violence have access to just and effective remedies, including compensation and indemnification (Access to Justice for Women Victims of Violence in the Americas, 2007: 32).

All major countries in the Organization of American States (OAS) have ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, which is the only international treaty specifically addressing violence against women. The treaty allows groups or individuals to petition the Inter-American Commission on Human Rights

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(IACHR) for state violations to protect women. In their 2007 report, the IACHR noted, “The international instruments adopted to protect women’s rights to live free from violence reflect a consensus among States and their acknowledgement of the discriminatory treatment that women have traditionally received in their respective societies, which has exposed them to various forms of violence: sexual, psychological, and physical violence, and abusive treatment of their bodies. Those instruments also reflect the commitment that the States have undertaken to adopt measures to ensure the prevention, investigation, punishment, and redress of violence” (7).

The American Convention on Human Rights, the American Declaration on the Rights and Duties of Man, and the Convention of Belem do Para bind member states to establish effective judicial remedies to violence against women. Further, “States’ duty to provide effective judicial recourse is not served merely by their formal existence; that recourse must also be adequate and effective in remedy in the human rights violations denounced” (8). The IACHR has noted that, while the ratification of international human rights documents prompted most states to enact legislation addressing violence against women, the quality of these responses is still lacking. They described a “significant gap between the formal availability of certain remedies and their effective application” (8). In some cases, the failure to investigate and prosecute cases of violence against women rises to the level of systemic impunity, and “the impunity that attends these crimes merely perpetuates violence against women as an accepted practice in American societies, in contempt of women’s human rights” (8). AN IACHR commission noted that women are often killed despite having contacted the state for protection, as protective orders or other enforcement mechanisms may not be duly implemented. Police in particular fail to enforce their duty to protect women. “The inaction on the part of the State authorities is partially attributable to an inherent tendency to be suspicious of the allegations made by women victims of violence and the perception that such matters are private and low priority” (9). They noted two types of problems with existing civil and

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criminal laws specific to violence against women. First, the language and content leave gaps that are inherently discriminatory. Outdated laws based on stereotypes about the role of women remain in effect. Many states lack clear regulations and procedures, lack training programs that instruct officials on the implantation and application of legislation, and fail to inform the general public about the scope and extent of the problem. Resources are sorely lacking for services for victims, and their geographic coverage is limited, making assistance for rural women particularly hard to find. The Commission noted that violence, and access to justice to alleviate it, is especially tragic for indigenous and Afro-descendant women (Access to Justice for Women Victims of Violence in the Americas, 2007).

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Since 1992, the U.S. State Department's Human Rights Reports have tracked domestic violence offenses. As of 2001, virtually all American countries had established a national office on violence against women, with most doing so in the early to mid 1990s. All countries in the Americas, except Canada, Brazil, and Paraguay, have implemented national-level legislation prohibiting domestic violence. Peru was the first Latin American country to do so in 1993. The U.S. added such legislation the following year with the establishment of the Violence Against Women Act (VAWA).

The Convention of Belém do Pará requires member states to enact "penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures, where necessary," to take "all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women" and to "require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property" (Access to Justice for Women Victims of Violence in the Americas, 2007, 27). They must also develop training programs for all those involved in the administration of justice, hold educational

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campaigns for the general public, provide appropriate services for victims, and ensure the ongoing gathering of statistics and research on violence against women (Access to Justice for Women Victims of Violence in the Americas, 2007).

Another specific dimension of the right to judicial protection is the right to seek effective precautionary protection. Article 8.d of the Convention of Belém do Pará describes some of the types of protective measures that states are required to provide in cases of violence against women, which include appropriate specialized services like shelters, counseling for all family members, and care and custody of the affected minors. These specialized services are in addition to court restraining orders or other measures that compel assailants to cease and desist and protect the physical safety, freedom, life and property of the victims (Access to Justice for Women Victims of Violence in the Americas, 2007, 36). Similarly, the African Charter on Human and Peoples' Rights obliges States to actively ensure women are safe in their homes (Meyersfield, 2004).

State crimes range from genocides, which are the result of deliberate action, to “the failure to act against preventable harm”

State Crime

Kauzlarich, Matthews and Miller (2001) provided a description of state crime that included the following elements:

- Harm to individuals, groups, and/or property;
- Product of either action or inaction by the state or state agencies;
- Action or inaction is directly related to an assigned or implied duty or obligation;
- Can occur by commission or omission;
- Done in the self-interest of the state and/or the elite groups that control the state.

State crimes range from genocides, which are the result of deliberate action, to “the failure to act against preventable harm” (White, 2008, 37). White (2008) explained, “The authority vested in the state means that it has an intrinsic capacity to do harm” (36). Within a state’s borders, offenses can occur through secrecy, cover-ups, disinformation, and failed accountability. Examples of state crimes include genocide in

Darfur by Sudanese governmental officials and state-supported Janjaweed (Mullins and Rothe, 2007; Rothe and Mullins, 2007); the United States illegal invasion and occupation of Iraq (Kramer and Michalowsk, 2005); the conditions and torture at Abu Ghraib (Hamm, 2007); the ongoing conflict and crimes against humanity in Uganda (Mullins and Rothe, 2008), the increased use of transnational corporations and/or private military companies as proxies of state crimes (Whyte, 2003), and, recently, the use of genocidal rape in Rwanda (Mullins, 2009). Additionally, state crime scholars have described “soft” atrocities, or “atrocities that do not come from the sharp edge of a knife, the blunt force of a club, or the tearing force of a bullet, but from slower and seemingly more “natural” forms of death and suffering” (Rothe , Ross, Mullins, Friedrichs, Michalowski, Barak, Kauzlarich, & Kramer, 2009). An example

a key feature of state crime is that of denial; either that the act or problem occurred, that it is a criminal violation, or that they had a responsibility or duty to respond/prevent the specific act.

of a soft atrocity includes the horrendous numbers of people that die from preventable diseases, malnutrition, and starvation (Enloe, 2007; Farmer, 2005). Although some practices fall short of being labeled criminal, they may be considered state crime when they are perceived by the majority of the population as illegal or socially harmful (Ross, 2000a; Ross, 2000b).

The state is generally able to escape scrutiny because of that very authority.

Cohen (1993, 2001) pointed out that it is not just States that deny their responsibility for state crimes but citizens as well. As White (2008) noted, a key feature of state crime is that of denial; either that the act or problem occurred, that it is a criminal violation, or that they had a responsibility or duty to respond/prevent the specific act. Many times the state silences or dismisses experts, or shifts responsibility or blame to other parties (White, 2008). As Barak (2009) noted, the economic crisis and the war on terrorism, while themselves examples of state crime, have also created the foundation for additional state crimes in that needed resources have been devoted from areas in which states have a responsibility—in this case, domestic violence. State crime furthers the goals of the state or the elites who compose it (Barak, 1991; Green and Ward, 2004; Kramer, 1994; Ross, 2000a; Ross, 2000b; White, 2008).

Examining Domestic Violence as a State Crime

As has been demonstrated, states clearly have a duty to respond and to attempt to prevent domestic violence. This form of violence may be perpetrated by third parties, but it is the inaction, or inadequate action, by the state that allows it to continue. The following section highlights examples of state inadequate action or inaction that resulted in serious physical injury or death.

Examples of State Failure Relevant to Domestic Violence

The United States

Between July 6, 2000 and December 23, 2002, dispatch records and police reports document that Lucille Young contacted the Escambia County Sheriff's Office about domestic violence incidents, restraining order violations, and other related incidents at least twenty times. Her husband beat her up, choked her, punched her, threatened to kill her, poured sugar in her gas tank, and slashed her tires. Despite these repeated attempts to obtain law enforcement assistance, Ms. Young was found dead with a gunshot wound to her head when a S.W.A.T team finally arrived at 5 a.m. on March 14, 2003. A different deputy found her teenage son at a nearby Winn-Dixie, bleeding profusely from a gunshot wound to the back, being beaten by the butt of a shotgun, and from multiple stabbings. He had tried to flee his father's attack after he saw his mother being shot. Although Sebastian Young was convicted and sentenced to life in prison by a Pensacola jury, Young's brother, Robert Mosco, and her son, Jon, have filed suit against the Sheriff's Office and Escambia County Department of Probation and Parole for failure to adequately protect her. The suit alleges that these agencies failed to properly enforce restraining orders, failed to follow up on warrants for Sebastian Young's arrest, and failed to properly supervise his probation. Their attorney, Chris Viachos, places most of the blame on the county probation and parole department, saying they failed to jail Young even when he violated his probation for a previous domestic violence incident. Lucille Young had made multiple calls to her husband's probation

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officer, who stated that she was just making problems for her husband, who he called a “big teddy bear” (Escobido, 2005).

Jennifer Magnano was murdered by her husband Scott in August 2007 in New Britain, Connecticut. He fired gunshots to her face and to her back in front of her 15-year-old son, David. Before murdering her, Scott repeatedly beat Jennifer in front of their children, rationed even the household toiletries, and refused to allow her any credit cards. On April 18, 2007 Jennifer fled the home with the children, fearing Scott would make good on his threat to kill her. She told a Plymouth police officer that she needed to file a formal complaint.

In Connecticut, victims of domestic violence do not have to file formal complaints or submit written statements for an officer to make an arrest, but no one told Jennifer this. Jennifer also repeatedly tried to seek shelter through the Prudence Crandall Center in New Britain and from the Connecticut Coalition Against Domestic Violence but was told she was not eligible because one of her daughters was 21 and her son was 15. Eventually, Jennifer fled to California, where she

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front of her
15-year-old son**

found a shelter that would accept the entire family. As she was filing for separation from Scott, he filed for custody of the two younger children. She was told she had to return to Connecticut to contest Scott's claim. Jennifer's older daughter confirmed her story, and explained that Scott had fondled her as well as misused her name to open a credit card in which he accumulated debts. Senior Assistant State Attorney Ronald Dearstyne refused to sign the arrest warrant, though, writing on it, “She waited two months to make the formal complaint. Is this an attempt to use the courts as leverage in their divorce case?” Finally, a warrant for Scott's arrest was ready on August 22, the day before he killed her, but it was for fondling Jennifer. This was four months after she had told police Scott threatened her. The warrant was never served. After killing Jennifer, Scott shot himself in the head a few blocks away from the family's home. Her family lobbied to have state laws changed that allow victims of domestic violence to submit testimony via video camera so they do not have to face their attackers or give away their whereabouts (Backus, 2009).

In 2000, Tari Ramirez murdered his ex-girlfriend Claire Tempongko in San Francisco, despite having attended state-mandated counseling. The case called attention to gaps in the

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system of protection for victims of domestic violence. Yet four years later, a similar murder demonstrated those gaps are still a problem. William Corpuz slashed his ex-wife's throat. William had pleaded guilty to misdemeanor domestic violence in November 2003 and was placed on probation as well as required to attend weekly two-hour counseling sessions at the Abuse, Violence, and Anger Cessation Alliance (AVACA). Corpuz seemed to be compliant in the program and even bought additional books on domestic violence. Yet staff noted a change at the final session, observing that Corpuz seemed preoccupied with the idea that his wife was keeping him from their two-year-old daughter, who was living with relatives in the Philippines.

Researchers who studied the San Francisco batterers intervention programs found only 40 percent of those required to attend ever completed the program. Studies from New York demonstrated that even those who do complete these programs do not necessarily change their behavior or attitudes much. Yet San Francisco courts, like other places across the country, have embraced these programs as budget cuts have hurt probation departments (Van Derbeken, 2004).

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On November 4, 2007, Plainwell Michigan Police Officer Kevin Brainard shot and killed his ex-wife Pamela Aukerman in front of their two-year-old daughter, Kayla. Michigan, like most states, had no specific laws addressing officer involved domestic violence. Pamela had repeatedly sought assistance from two domestic violence agencies, but both turned her away because her abuser was a police officer. A law-enforcement friend in a neighboring community, Ed Straub, agreed to take Pamela and her children in, and even spoke to Chief of Police Bill Bomar about Brainard's abuse. Chief Bomar refused to take any action, and later called his conversation with Ed Straub nothing but a private discussion. No action was taken to investigate the centers that turned Pamela away, despite the fact that they receive state and federal funds. Further, there has been no investigation of the Plainwell Police Department and the Chief of Police for his role in Pamela's murder. It is likely the same police indifference led to the murder of Lori DeKleine in neighboring Ottawa County in January 2008. DeKleine worked for one of the same centers that turned Pamela away

and was also denied assistance because her abuser was her ex-husband, Officer Ken Dekleine. Activists have commented, "Michigan can no longer afford to 'count on' private dv agencies [which are not held accountable] when it comes to protecting victims of OIDV. This 'counting on' and the state blindly trusting private dv [domestic violence] agencies with the lives of victims of OIDV has unfortunately cost victims of OIDV their lives" (The Pamela Auckerman Michigan Officer-Involved Domestic Violence Legislation..., nd).

Mandatory arrest policies, although seemingly positive, can have negative effects. Victims have been arbitrarily arrested in conjunction with, or in some cases instead of, their abusers

Mandatory arrest policies, although seemingly positive, can have negative effects. Victims have been arbitrarily arrested in conjunction with, or in some cases instead of, their abusers. These women are subjected to additional violence at the hands of the state, in the form of force during arrest, threats to remove and actual removal of children into the hands of the state, strip searches, and other degrading conditions of confinement.

This is even worse for women of color, who are more likely to be arrested as a result of mandatory arrest policies than are Caucasian women (Police Violence & Domestic Violence, nd). An African-American woman told the story of police officers beating her when they responded to a call about a "family quarrel." Her children were locked outside at the time. She also reported being gagged with a rag by the officers, then beaten until she fainted before they dragged her across her yard to the police car. Sometimes, assaults by police officer are deadly. In June 1994, police shot 22-year-old Rebecca Miller, a Black woman who had been in a fight with her boyfriend. They did so at close range and in front of her two-year-old son. On September 10, 1997, Oakland police shot Venus Renee Baird in the chest, killing her in front of her family while they were supposed to be responding to a neighbor's domestic violence call (Police Violence and Domestic Violence, nd).

Native American women living on reservations go virtually unprotected. Laws prevent tribal police from acting on complaints in felony cases or when the situation involves a non-Native. Investigation and prosecution is left to federal authorities, who do not adequately respond (Bhungalia, 2001). They are also re-victimized by law enforcement. Alex Wilson, a re-

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searcher with the Native American group Indigenous Perspectives, commented, "In a reservation community, 911 would call dispatch police to a scene of domestic violence, but police would call the victim by cell phone and decide himself when or if he should go to the victim's home. Often the women would wait for an hour and other times the abuser would answer when the police called, and would say everything was fine, and there was no need for them to come" (Bhungalia, 2001). In another case, a Native Alaskan woman had been held hostage and dragged across the lawn by her intimate partner. When an Anchorage officer came to investigate, he ignored what she was saying and demanded that she get undressed so he could check her for bruises. She was terrified he would rape her. The officer claimed the woman was drunk at the time, yet hospital records refute this. Her attacker was never convicted.

Native women often stay with abusers because if they leave, they risk losing their children. In one case, a woman was beaten so badly she had several broken bones and sought refuge at a domestic violence shelter. Through the support of his tribe, her husband obtained custody of their two children. He continued his violent behavior, throwing their two-year-old across the room on one occasion. The mother was never able to regain custody (Bhungalia, 2001). Native women also distrust "the system," with good reason. The legacy of forced sterilization and removal of children to boarding schools is still all-too-fresh. Because issues of jurisdiction are so complicated between reservations and state and federal law, many times law enforcement officers simply choose not to get involved (Bhungalia, 2001).

Undocumented women suffer tremendously as well. When they report domestic violence to police, they run the risk of being arrested and deported. Since local law enforcement often ride along with Border Patrol, many women in border states like California, Texas and Arizona are simply afraid to call the police for help (Police Violence and Domestic Violence, nd). Arab, Arab-American, and Muslim women have been refused help by police, who make derogatory comments referencing these women as potential terrorists. They have also been turned away from shelters because staff are con-

Undocumented women suffer tremendously as well. When they report domestic violence to police, they run the risk of being arrested and deported

cerned they will draw attention from the police (Police Violence & Domestic Violence, nd). Erez, Adelman, and Gregory (2008) noted, "The rise in anti-immigrant public sentiment has resulted both in the exclusion of some immigrants from access to education and medical care and in increased local law enforcement of immigration law. When coupled with post-9/11 delays in processing visa applications, the consequences of anti-immigrant sentiment further complicate the implementation of legal reforms for immigrant battered women" (37). The trend in some cities, counties, and states is for law enforcement to enter into 287(g) agreements with the federal government to enforce immigration law for Immigration and Customs Enforcement (ICE). Hence law enforcement officers—the ones charged with protecting battered women—must now carry out federal immigration law, resulting in undocumented immigrant victims' fear of deportation or the removal of their children.

They did not respond most of the time, but when they did, two undercover officers knocked on her door and arrested her on an old warrant for solicitation, doing nothing about the abuse

Law may not be intentionally gender-biased, but "one that creates a status dependency, such as immigration law, makes immigrant women more vulnerable to the domestic violence power dynamic" (Erez et al., 2008).

Incite! Women of Color Against Violence reported a young African American transgendered woman who was living in Los Angeles called the police numerous times about her abusive boyfriend. They did not respond most of the time, but when they did, two undercover officers knocked on her door and arrested her on an old warrant for solicitation, doing nothing about the abuse. In 2002, a transgendered woman in Washington, DC was choked by her male partner and chased through their apartment as she tried to defend herself. When she managed to get away and call the police, they responded by arresting her, handcuffing her, and forcing her down the stairs. When the officers saw her identification, they began referring to her using male pronouns and calling her "mister." She was detained for seven or eight hours at the police station before being charged with assault against her abuser. The charges were eventually dropped, but no charges were ever filed against her abuser. In 2004, another transgendered woman in Chicago was thrown against a wall and to the floor by police. Her wrist was broken,

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but she was denied medical attention while in police custody (Police Violence & Domestic Violence, nd).

Haiti

Haiti ratified CEDAW and the Convention of Belem do Para, acknowledging the state's responsibility to exercise due diligence and to undertake efforts to reduce violence against women. Yet reports to the IACHR by both state and non-state sources found domestic and sexual violence against women to be widespread. Between 2004 and 2009, Doctors Without Borders, an NGO, treated 6,400 victims of violence, with at least 500 of them victims of domestic violence. A UN Special Rapporteur on Violence Against Women found 90% of Haitian women had experienced some form of gender-based violence. The Commission observed that "discrimination against women is a constant and structural feature in Haitian society and culture" (The Right of Women in Haiti..., 2009). Armed groups attack Haitian women as a means to attain power.

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Pakistan

In Pakistan, honour killings and domestic violence are illegal, yet these laws are rarely enforced. In some cases in Pakistan, a tribal council called a *jirga* determines that the woman should be killed and sends a group of men to carry out the task. Victims range in age, but the common factor is typically an allegation of some type of "illicit" sexual relationship. The accused are generally not given the opportunity to dispute the allegation, and even if they did, cultural beliefs and laws support the man's side. Amnesty International (1999) stated, "The Government of Pakistan has taken no measures to end honour killings and to hold perpetrators to account. It has failed to train police and judges to be gender neutral and to amend discriminatory laws. It has ignored Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which it ratified in 1996" (2). CEDAW requires member parties to "modify the social and cultural patterns of conduct of men and women" so as to eliminate prejudice and discriminatory practices. Some argue

that this is cultural imperialism. Yet, in the 1993 World Conference on Human Rights, it was determined that human rights are universal and indivisible. When the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women in 1993, it urged states not to “invoke custom, tradition, or religious consideration to avoid their obligation” to eliminate discrimination against women. Women in Pakistan have few options, as there is a scarcity of women’s shelters, and any woman who is traveling alone may be targeted by strangers, male relatives hunting for her, or even police. Often, suicide is considered the only means of escape. Pakistani women leaving abroad still face the same threats. Rarely do authorities ever investigate the cause of death, as women may be buried in unmarked graves and all records of their existence erased (Mayell, 2002).

In Pakistan, honour killings and domestic violence are illegal, yet these laws are rarely enforced

Sabira Khan, who was married at age 16 to a man more than twice her age, tried to break her husband’s rule that she could never see her family again. Her husband and his mother poured kerosene on Sabira when she was three months pregnant, burning 60 percent of her body. The local magistrate determined, based on her husband’s claims, that Sabira was insane and had set herself on fire. The government has decried these acts as “features of Pakistan feudal society” and not as part of government policy (Pakistan: Honour Killings of Girls and Women, 1999).

Two specific statutory laws make it difficult for women to receive adequate protection. The 1990 law of Qisas and Diyat conceptualize physical injury, manslaughter, and murder as crimes against the victim, not the state. This has sent the message that murders of family members are a family affair, thus judicial intervention is not necessary. Further, the law proscribes a maximum of 14 year sentence for someone whose heir of the victim is a direct descendent of the offender. So, if a man murders his wife with whom he has a child, he can at most be sentenced to fourteen years. Men who murder their wives or daughters can also find relief under the provision of “Grave and sudden provocation” of Section 300(1) of the Pakistan Penal Code. Amnesty International (1999) explained, “In its interpretation by the courts, the law provided men who have killed their wives or daughters for allegedly bringing

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shame on them with mitigating circumstances not available to women. Courts opined that if the provocation—to a man's honour—grave and sudden as when someone tells him that his wife has an 'illicit' relationship, he loses all power of self-control and is not fully responsible for his actions" (13). Although this provision was deleted when the law was introduced in 1990, it still remains part of judicial practice and still discourages women from registering complaints, in some cases due to financial corruption. Villagers in Kashmore reported in 1993 that the police charge 7,000 Rupees to remain silent about *karo-kari* murders. Given the frequency of these offenses, this police extortion is quite lucrative. In their 1999 report, Amnesty International researchers commented, "Every year hundreds of women are known to die as a result of honour killings. Many more cases go unreported and almost all go unpunished. The isolation and fear of women living under such threats are compounded by state indifference to and complicity in women's oppression. Police almost invariably take the man's side in honour killings or domestic murders, and rarely prosecute the killers" (2). In fact, a man only partially restores his honor by killing the "offending" woman. He must also kill the man allegedly involved, but since the *kari* is murdered first, the *karo* often hears about it and flees (Pakistan: Honour Killings of Girls and Women, 1999).

In fact, a man only partially restores his honor by killing the "offending" woman

Nicholas Kristof (2008) reported the case of Naeema Azar, a Pakistani woman who had once been a real estate agent. She was earning a good income and supporting her three children when she decided to seek a divorce from her husband, Azar Jamsheed. He agreed, but after the divorce was final he came to say goodbye to the children and then pulled out a bottle of acid and poured it on his wife's face. Naeema lost all of her left ear and most of her right one, she is blinded, and her eyelids and most of her face have been burned off. Jamsheed ran away and has never been arrested. The Progressive Women's Association has documented 7,800 acid attacks in the area, with convictions obtained in only 2 percent.

Jordan

Jordanian men utilize Article 98 of the Penal Code, which says that if a man kills in a fit of fury, the penalty is reduced.

Most get sentences between three months and two years (Soussi, 2005). In Jordan, a woman fearing her husband or family can check herself into prison, but she cannot voluntarily leave. The only person who can get her out is a male relative—often the very person who is abusing her (Mayell, 2002).

Bangladesh

Despite new laws criminalizing acid attacks in 2002, more than 2,600 cases have been reported in Bangladesh since 1989. Purchasing acid is still very easy, costing between 44 cents and 59 cents per pound (Bangladesh: Acid Attacks Continue Despite New Laws, 2009). New York Times Reporter and author Nicholas Kristof (2008) investigated acid attacks in the large area from Asia to Afghanistan, calling them “a kind of terrorism that becomes accepted as part of the background noise in the region.”

Afghanistan

Human Rights Watch reported in December 2009 that violence against women and girls remained tremendously high eight years after the fall of the Taliban. The Afghan government has failed to bring killers of women to justice, setting a tone of impunity. One nationwide survey found 52 percent of women suffered physical violence. In more than half of all marriages, the wives are under age 16, and 70-80 percent take place without the girl's consent. Given the strong correlation between domestic violence an early and forced marriage, this is

The Progressive Women's Association has documented 7,800 acid attacks in the area, with convictions obtained in only 2 percent

problematic (Afghanistan: Keep Promises to Afghan Women, 2009). Sixteen-year-old Mujahedeh was murdered by her own father because she attempted to escape her abusive husband. She had sought refuge at a Ministry of Women's Affairs and was attending school. Her mother beckoned her home, insisting she could continue her studies there and that her father had forgiven her “sin” of leaving. No one has been prosecuted for her murder. There were 704 cases of domestic violence, with 20 documented honor killings, between January and September 2006 (Esfandieri, 2006).

Latin and South America

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Although laws are in place to protect victims in most Latin and South American States, they are not being utilized frequently. In 2004, there were 236,417 incidents of domestic violence reported, yet investigations occurred in only 14.149 (5.9%) of cases, and 92% of those were closed after the initial hearing. Venezuela also reported that few cases reach the sentencing phase, as did the Dominican Republic and Ecuador. In Nicaragua, only eight protective orders were authorized despite the nation's legislation. In Ciudad Juraez, only 20 percent of murders involving female victims went to trial (Access to Justice..., 2007).

South Africa

South Africa enacted a new Constitution in the 1990s that explicitly sees women's rights as human rights. The Bill of Rights protects "the freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources." The Domestic Violence Act of October 28, 1998, which became operational on December 15, 1999, empowers the police to complete investigations and make arrests with or without warrants in cases of domestic violence, which is defined broadly to include violence in marital and non-marital relationships (those in which the parties reside together). Police are obligated to inform victims they have the right to obtain free protection orders, and must arrest an abuser that has violated a protective order. The Act also includes shelter provisions for victims. Unfortunately, a 2001 study found there were still a lack of resources and trained personnel to adequately implement the Act (Onyejekwe, 2004).

The Afghan government has failed to bring killers of women to justice, setting a tone of impunity. One nationwide survey found 52 percent of women suffered physical violence

Kyrgyzstan

Although kidnapping and domestic violence are both illegal in Kyrgyzstan, police and local authorities fail to enforce the law because they do not view them as serious offenses. Government authorities often encourage women to reconcile with abusers and block their access to justice and safety. There are more than a dozen women's rights organizations located across Krygyzkstan operating hotlines, offering coun-

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ported domestic vio-
lence cases went to trial
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sulted in conviction**

seling, and assisting with legal and medical fees, but few operate shelters. Major cities may have a shelter, although they typically have eight beds or fewer. Laws regulating NGOs allow women and their minor children to stay for free for only ten days. In rural areas women seeking safety must stay in the homes of NGO leaders or nowhere. NGOs receive very little financial support from the government of Krygyzkstan and generally rely on foreign sources of funding. Staff at womens' rights NGOs face tremendous danger. Several told HRW researchers that they had been attacked by abusive husbands because they gave shelter to women (Reconciled to Violence, 2006).

The government of Krygyzkstan ratified the International Covenant on Civil and Political Rights (ICCPR), which obligates it to ensure each citizen's right to life, security, and physical integrity. The ICCPR also requires member parties to ensure adequate remedy for those whose rights have been violated. HRW concluded that the Krygyzkstani government's failure to prevent, investigate, and prosecute violence against women is in violation of its obligations under the ICCPR.

England and Wales

In England and Wales, only one in eight reported domestic violence cases went to trial in 2004, and 5.4% resulted in conviction (Making the Grade?, 2007). Despite signing the Beijing Platform for Action, the 2007 Making the Grade Report, sponsored by End Violence Against Women (EVAW), found that government activity to reduce violence against women was still patchy, at best in the UK. Few government departments could describe their strategic approach to the problem, despite the fact that this was required by the BPfA. EVAW noted in their 2006 report that funding for initiatives to end violence against women is still precarious, thus threatening the sustainability of efforts. In March 2006, the British police contacted the Southall Black Sisters (SBS) because they had rescued an Asian woman from abuse by her husband and in-laws but could find no place for her to stay. Until SBS agreed to assist, they were considering detaining the woman at police headquarters, as if she had committed a criminal offense (Making the Grade?, 2007). Women from outside the European Union (EU) who join UK resident or national spouses

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suffer more, as they are not entitled to public funds or housing benefits (Making the Grade, 2006). Police often respond to these women as if they are illegal immigrants, as opposed to victims (Making the Grade?, 2007). The authors explained, “immigration policies and procedures keep women trapped, and criminalize them rather than offering them protection” (21).

In Wiltshire, England, the Independent Police Complaints Commission (IPCC) has upheld two complaints against the Wiltshire Police by the family of Hayley Richards. Higo Quintas attacked Ms. Richards in her apartment in June 2005. She sustained neck injuries and required hospital attention. Ms. Richards had told police where they could find Quintas but officers told her they were busy dealing with a report of a dog locked in a car and then were never re-deployed to find him. One week later, Quintas slit Hayley Richards’ throat. Police have admitted they did not act fast enough, and Chief Constable Martin Richards state that the force was making changes recommended by the IPCC (Murdered Woman “Failed” By Police, 2006).

Sabina Akhtar was stabbed in the heart and killed by her husband in September 2008 in Manchester. A domestic violence center is filing suit against the Greater Manchester Police Force and the Crown Prosecution Service for failing to protect Ms. Akhtar. The organization’s chief executive, Sandra Horley, commented, “Under human rights legislation the authorities have a duty to protect persons and we believe that in this case the police and CPS failed spectacularly. If they had handled it better she might still be alive today” (Jenkins, 2009). Akhtar was wed to Malik Mannan in an arranged marriage in Bangladesh. She joined him in England when she was already pregnant. She went to the police 25 times to complain that he attacked her and repeatedly threatened to kill her. Mannan was arrested and released with a warning not to contact his wife. He did, and was arrested again for hammering on her front door, which triggered the alarm. CPS ruled, however, that there was not sufficient evidence to proceed with prosecution and released Mannan. He promptly sent his wife a text message saying, “I am a free man since 1:30 p.m. Case file closed. Isn’t it great?” He stabbed her to death several days later (Jenkins, 2009).

Police often respond to these women as if they are illegal immigrants, as opposed to victims

In the weeks before Rana Faruqi's ex-boyfriend Stephen Griffiths murdered her, he had threatened her and cut her car brake pipes. The police broke two appointments to come to her home, until finally she went to the station and dumped the car brake pipes on their desk—only days before she was murdered. 999 tapes recorded Rana, desperately telling the operator that Griffiths was near, armed with three hunting knives. Also in 2003, Alan Pemberton murdered his estranged wife Julia. Although 999 tapes of her call document the control officer assuring Julia officers were on their way, it was another seven hours before they arrived. Alan had already shot and killed their 17-year-old son, William, outside, and Julia is heard telling them she thought she had one minute to live. Families of both women have filed suit under the Human Rights Act.

police forces de-emphasized domestic violence in the last decade, based on pressure from the central government to focus more on street crime and ensure measurable decreases

This allows the high court to declare that the police had failed to protect the victims. In 1997, the government passed the Protection from Harassment Act, intended specifically to protect victims of stalking. At no time did the officers in either case utilize the Act's provisions to arrest the perpetrators. In fact, sources have said that Thames Valley police forces de-emphasized domestic violence in the last decade, based on pressure from the central government to focus more on street crime and ensure measurable decreases (Rose, 2007).

Challenges in Applying State Responsibility

One of the biggest challenges is in the legal arena. In the U.S., for instance, the 3rd Circuit Court ruled that police are immune to claims that they failed to protect a victim even after she had obtained numerous protective orders and reported violations of them. The plaintiff in the case *Burrella v. City of Philadelphia* was married to a Philadelphia police officer, who shot and seriously injured her before shooting and killing himself. She sued the city and several police officers, claiming their failure to arrest her husband violated a constitutional right to protection. The court, while agreeing the situation revealed a terrible deficiency on the part of the Philadelphia police, determined the officers had qualified immunity. The court further held that, "absent a 'clear indication' of legislative intent, a statute's

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mandatory arrest language should not be read to strip law enforcement of the discretion they have traditionally had in deciding whether to make an arrest” (Civil Liability and Domestic Violence Calls—Part One, 2008). In *U.S. v. Morrison*, the Supreme Court struck down the federal remedy provision of the VAWA, leaving no means for municipal liability.

In the U.S., litigants have tried to establish police accountability for their failure to protect women from domestic and sexual violence through two Constitutional claims. One is under the Equal Protection Clause of the Fourteenth Amendment and the other is through the Substantive Due Process Clause of the Fourteenth Amendment. These claims are brought through 42 U.S.C. 1983, which provides civil remedy for violations of federal rights by a state. Yet such cases are difficult to win. Plaintiffs must demonstrate that the conduct in question deprived a person of rights, privileges, or immunities that are established in the Constitution or federal law and that the conduct performed was under the color of law. That conduct by police officers is under the color of law is clear. The difficulty, then, is for the court to determine that law enforcement’s actions deprived the plaintiff of a federal or Constitutional right. Under the Equal Protection Clause, this generally requires the plaintiff to demonstrate she was part of a suspect class to whom the police discriminate in general. Under the Substantive Due Process Clause, the plaintiff must establish that she had a substantive constitutional right to affirmative protection by police, and they violated it by their action or inaction (Civil Liability and Domestic Violence Calls—Part One, 2008; Civil Liability and Domestic Violence Calls—Part Three, 2008).

Most litigants bringing suit under the Equal Protection Clause have not been successful. They must clearly demonstrate that it is the policy or practice of police to provide less protection to victims of domestic violence than to other victims, that discrimination against women was a motivating factor, and that the plaintiff was injured by the policy or practice. Given that most domestic violence laws are gender-neutral, litigants rarely make it past this level of scrutiny. As Catharine

In the U.S., litigants have tried to establish police accountability for their failure to protect women from domestic and sexual violence through two Constitutional Claims

MacKinnon commented, “if you don’t think bad things about women while doing bad things to them, it doesn’t violate the Equal Protection Clause” (in Lordi, 2006, p. 336).

In 1989 in *Deschaney v. Winnebago County Department of Social Services*, the Supreme Court ruled that the Due Process Clause did not require a state to protect its citizens from third party violence. Although seemingly problematic, *Deschaney* created an exception that has proven useful in holding States accountable. This exception is discussed below.

When States Are Held Responsible

Most of the efforts to hold states responsible for domestic violence have occurred in the U.S. In 1985, Tracy Thurman sued the city of Torrington, Connecticut, asserting that the city police responded indifferently to victims of domestic violence. Thurman eventually won a \$2 million settlement against the city in the first federal case of its kind. The case also prompted greater attention to the police response to domestic violence. The Governor of Connecticut appointed a task force to study the systems of response to domestic violence and, in 1986, the Connecticut General Assembly passed the Family Violence Prevention and Response Act, which established next-day access to courts for information and protection. The law also established mandatory arrest policies, made criminal protective orders available to victims, and established a special family violence intervention unit (Escobido, 2005).

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Established as an exception in *Deschaney*, the state-created danger doctrine can be used to demonstrate the state’s affirmative duty to protect. When police conduct creates or increases harm, it has violated a constitutionally-protected substantive right under a 1983 statute claim. Although *Deschaney* does not provide clear guidance regarding the degree to which the state must create or enhance danger before assuming a constitutional duty to protect, it does establish that the danger must be greater than it would have been absent state involvement. The Tennessee Supreme Court held that a county police department can be held liable for failing to enforce a restraining order where the order, combined with the statutory mandate, created a special

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duty to arrest when there was probable cause to do so. The New Jersey Superior Court has found similarly as has the New York Court of Appeals and the Oregon Supreme Court (Civil Liability in Domestic Violence Calls—Part One, 2008; Civil Liability in Domestic Violence Calls—Part Two, 2008; Civil Liability in Domestic Violence Calls—Part Three, 2008).

In *Freeman v. Ferguson*, Norman “Bud” Downen, Jr., murdered his estranged wife Geraldine Downen and her daughter, Valerie, despite the existence of a restraining order against Bud that should have prohibited him from in any way contacting Geraldine or Valerie. The Eighth Circuit Court held that the police chief, a close friend of Bud’s, could be held liable under the state-created danger theory if, as was alleged, he told his officers not to take action against Bud. Yet other courts have ignored the state-created danger exception to *Deschaney*. What is most difficult is that courts have insisted on determining affirmative conduct. Thus courts have found police activity to be “mere failure to act.” Were courts to look at the impact of that failure instead of taking the failure alone, whether police behavior was “action” or “inaction” would be irrelevant. When police have no affirmative duty to protect, victims fear contacting them for help (Civil Liability in Domestic Violence Calls—Part One, 2008; Civil Liability in Domestic Violence Calls—Part Two, 2008; Civil Liability in Domestic Violence Calls—Part Three, 2008).

The inter-American human rights system appears to be a useful tool in holding states accountable for domestic violence. It has established that the obligation of the States to act with due diligence in response to acts of violence applies as well to non-State actors, third persons and private parties. In *Velasquez Rodriguez v. Honduras*, the IACHR found the government of Honduras responsible for politically motivated disappearances. Although the Court recognized the disappearances were not ordered by the government, they determined the state had failed to prevent them and had created a climate in which such incidents could occur (Libal & Parekh, 2009). The Court wrote in its judgment in *Case of the Massacre of Pueblo Bello*

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A State's duty to adopt measures to prevent harm to and protect private individuals in their mutual relations depends on whether it had knowledge of a real and present danger to a particular individual or group of individuals, and whether it had any reasonable chance of preventing or avoiding that danger. In other words, although the legal consequence of a private individual's act or omission may be to violate another private individual's human rights, that violation is not automatically imputable to the State. The circumstances of each particular case have to be considered, as do the measures taken so that those obligations to ensure are fulfilled (Access to Justice..., 2007, 25)

The IACHR has written that a state's investigation into cases involving violence against women must be initiated as part of their duty to protect and not at the behest of victims. Investigations are to be immediate, exhaustive, serious, and impartial. States can be held liable for failing to order, practice, or evaluate evidence that might be crucial to the case.

In the U.S., about 60 percent of restraining orders are violated within one year, with one-third of those resulting in severe violence. When restraining orders are enforced, however, the result is less serious attacks on victims

Recommendations

As this paper has made clear, the decision by the U.S. in *Morrison* and *Gonzalez* that police are not obligated to enforce restraining orders violates several major international human rights agreements, both in fact and in spirit. Hopefully the Inter-American Commission on Human Rights will help correct this wrong and the U.S Supreme Court will agree to hear another case in which they reverse their decision. Data supports the need for restraining orders to be enforced as a means of protecting women. In the

U.S., about 60 percent of restraining orders are violated within one year, with one-third of those resulting in severe violence. When restraining orders are enforced, however, the result is less serious attacks on victims. For instance, in Denver, where 87 percent of violators were arrested, only two percent of

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victims were re-abused in the six months after obtaining the order. In contrast, in Washington, DC, where police arrested violators only 41 percent of the time, the result was 11.9 percent of victims reported re-abuse in the six month period. Enforcement of restraining orders was found to result in a 38 percent decrease in the proportional rate of domestic violence homicides in Orange County, Florida (Escobido, 2005). A 2003 study that reviewed twenty years of data from 48 cities found that, when domestic violence victims had greater access to legal remedies, fewer killed their spouses. The implication is that they had other options for escape besides lethal ones (Domestic Violence & Police Violence, nd). Countries outside the U.S. also have an obligation under various human rights agreements to offer some type of protective order to victims and to ensure that such orders are enforced.

Additionally, it is imperative that courts begin to hold police accountable for enforcing other legislation that protects women. Several U.S. studies in the mid 1990s showed that police often disregard legislative mandates and departmental policies and respond to victims informally, often not even authoring a formal report. This was particularly true in cases where a fellow officer was involved as the abuser (Police Family Violence Fact Sheet, nd). Shockingly, a 1995 study found only 19 percent of surveyed departments indicated an officer would be terminated as a result of a second allegation of domestic violence. Rarely do these allegations result in prosecution. There were 23 domestic violence complaints levied against Boston police employees in 1998-1999, yet none resulted in criminal prosecution. A study of the Los Angeles Police Department found 91 sustained cases of domestic violence between 1990 and 1997. In more than 75% of those cases, the allegations were not even mentioned in the officer's performance review. Twenty-nine percent of the officers facing allegations were promoted, with some being promoted within two years of the alleged incident (Police Family Violence Fact Sheet, nd). In 1997, the Los Angeles Office of the Inspector General conducted an investigation of the LAPD after a consultant, Bob Mullally, was shocked by the amount of domestic violence allegations against officers and even more, at the department's

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handling of them. The LAPD responded by suing Mullally, who was finally sentenced in 2002 to 45 days in prison. None of the officers were ever prosecuted. Despite passage of a 1996 law prohibiting domestic violence felony offenders—including officers—from owning weapons, studies have shown that few police departments are enforcing this against their own. The easiest way around this, if the officer is ever prosecuted, is to negotiate plea bargains such that the final offense is a misdemeanor, not a felony. As Stark (2007, 2009) explained, states should consider adopting legislation that recognizes the cumulative impact of repeated abuse and that accounts for coercive control, not just physical incidents.

Participation in international efforts to address not just domestic violence but broader gender inequalities is essential for the U.S., both in regard to better serving its victims as well as in helping coordinate programs internationally (Libal & Parekh, 2009). The U.S. has never ratified CEDAW, as leaders have historically asserted that “the rights of women in the United States are firmly established and therefore the United States could not benefit from entering and agreeing to respect international standards of women’s equality” (Ralph, 2008, pp. 182-183). Support is building for the International Violence Against

Women Act (I-VAWA), however. Meyersfield (2004) has suggested reconceptualizing domestic violence as “private torture.” Using torture to describe what occurs would allow for application of various binding international treaties. As the Convention Against Torture obliges States to enact

measures to address torture, their failure to address domestic violence would make them liable. This approach holds some promise, but would be less necessary if courts and international enforcement bodies held states accountable for violating the other international treaties and agreements described herein that oblige them to protect women from domestic violence.

It is important to note that, although the primary focus of this paper is on legal responsibility, a human rights approach would also require states to protect victims in other ways. For some time, scholars in the U.S. have advocated viewing domestic violence as a public health concern, rather than solely a criminal one. Similarly, DeGue and Mercy (2007) explained that

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nonkilling can be viewed as a public health issue, which would emphasize primary prevention that helps reduce the likelihood of violence as well as its lethality. Applied to domestic violence, this approach would necessitate educational programming and other state-directed efforts to challenge gender inequalities in general and violence in particular.

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Authors must submit a title, a 100 word summary and a 80 word biographical sketch, prior to acceptance of the complete proposal. After approval, authors will have four months to complete the final text, with an extension between 10,000 and 20,000 words. The Chicago Manual of Style should be used for reference.

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