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The Personal is Political--and Economic: Rethinking Domestic Violence

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I. INTRODUCTION

All social movements that engage matters of law and intimate relationships confront the challenge of sustaining theoretical coherence. Time passes; circumstances change. Theory developed in the context of one set of objective conditions, at a discrete historical moment, must possess the capacity to adapt to different conditions at later historical moments. This is particularly true when theory serves to inform praxis and when theoretical formulations serve to inform the strategies that affect the lives of real people.

The domestic violence movement is no exception. Feminist scholarship originally presented a clear and compelling discourse about the causes and consequences of domestic violence. The emphasis was on the privilege with which patriarchy was institutionalized in public realms as a matter of practice and law. Women activists responded to an emerging understanding about domestic violence and engaged in a protracted struggle to obtain public condemnation of what had been previously considered a private matter. Public attitudes did indeed change, and advocates were increasingly successful in securing legal remedies to domestic violence. The goals of domestic violence activists were explicit: to conceptualize domestic violence as an offense against women, to oblige law enforcement to treat violence against women as a legal issue—specifically as a crime—and to charge batterers with crimes commensurate with the severity of the harm inflicted on their victims.[1]

1. *See* Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 13, 16, 49

The passage of time and the introduction of legal strategies have raised new questions. Academics and activists alike appear to have reached the limits of theoretical possibilities within existing paradigms. Intervention strategies once deemed as vital to prevention efforts have revealed themselves wanting, both in their capacity to inform—and to be informed by—new theoretical advances in related fields, and equally important, in their capacity to provide structural relief to victims of domestic violence.[2] These new concerns have emerged to challenge a discourse focused principally on the criminalization of domestic violence.

Changing circumstances have revealed that the causes of domestic violence are more complicated than can be explained by patriarchy alone. To fully explain domestic violence, it is necessary to examine the private in the context of the public and the social and moral in the context of the political and economic. Structural economic dislocation, outsourcing, and plant closings (and in their wake chronic under- and unemployment, declining wages, diminishing benefits, and disappearing pensions), all hallmark features of globalization, have wrought havoc on communities across the United States. It is no longer sufficient to speak of private life (the household) as separate from public spaces (the workplace). Nor is it enough to speak of patriarchy as separate from the material conditions of daily life.

The concept that domestic violence is more complex than patriarchy is to suggest the need to reexamine the dominant theoretical model concerning domestic violence and the practical strategies that it inspired. The consequences of relying on the criminal justice system, both intended and unintended, are concerns that have increasingly engaged the minds of many legal scholars.[3] While the critique is ongoing and yet unresolved, the issues of the debate have been confined largely to the very concerns that the discourse seeks to challenge: the benefits of the criminal justice system and the degree to which it ought to be the principal response to domestic violence. For that reason, as this Article will argue, the

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(1999) (describing the efforts and gains of battered women's advocates to obtain improved police and prosecutorial response to domestic violence).

    2. *See infra* notes 27–31 and accompanying text (describing the law enforcement strategies as the dominant formulation of strategies for intervening in domestic violence).

    3. *See infra* notes 45–52, 71–78 and accompanying text.

debate has been limited by the very assumptions that define its scope.

This Article seeks to expand the scope of the domestic violence discourse beyond the parameters of criminal justice to include the political economy of everyday experiences of households. Such a paradigm shift examines the conditions of the private sphere as a function of the circumstances of public realms. It considers domestic violence from the perspective of the daily lives of men and women who have experienced an erosion of a subjective sense of economic well being in an environment of diminishing prospects. It focuses on the micro-processes reproduced in households as a result of the pervasive—and invasive—state of economic uncertainty associated with the new economy.[4] This Article argues that global economic conditions must be understood as conditions contributing to violence against women.[5]

Part II provides an overview of the development of domestic violence advocacy and examines the promises and problems of the current state of scholarship and practice. It sets forth the conceptual framework in which domestic violence is considered and from which interventionist strategies are based. Part II also reviews the ongoing debates concerning reliance on the criminal justice system and takes the position, along with other articles written by critical scholars, that the idea that current criminal justice mechanisms alone possess the capacity to ameliorate violence against women is no longer tenable.[6] More importantly, it concludes that the debates have failed to properly consider the conceptual difficulties inherent in reliance on the criminal justice system in the first place. Part II critiques the discourse for failing to move beyond the framework of patriarchy and the criminal justice system to consider the political economic determinants of domestic violence.

Part III expands the parameters of the debate and situates domestic violence in the context of global economic transformations that have produced chronic unemployment and economic uncertainty. It examines the impact of plant closings and

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4. *See* Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1924 (2000); Angus Loten, *Fearing Economic Uncertainty, Companies Put Spending Plans on Hold*, INC., Sept. 6, 2006, http://www.inc.com/criticalnews/articles/200609/pessimism.html (reporting on the current state of economic uncertainty and curtailed growth and spending).

5. *See infra* Part III.

6. *See infra* note 45 and accompanying text.

deindustrialization on the public life of communities and the private life of households and chronicles the way in which joblessness and economic downturn affect the quotidian experience. Part III suggests that domestic violence is better understood by theorizing household relationships in the context of the communities in which they live and demonstrates the correlation between economic strain and an increase in incidents of intimate partner violence.

Part IV examines the ways that economic uncertainty and exploitative working conditions, made all the more egregious in the age of globalization, contribute to domestic violence. It considers the function of gender identity, particularly the inability of men to fulfill gender-prescribed roles in the waged economy. It also examines how workplace conditions that reproduce modalities of patriarchal power produce violence at the workplace and act to influence the character of the private spaces of the home. Part IV illustrates how intimate relationships of coupling and household membership converge with market relationships and argues that private lives cannot be separated from global politics.[7]

Part V identifies the gains offered by a paradigm shift that includes analyses of the structural causes of domestic violence within a larger context of global economic instabilities. It sets forth expanded analytical tools with which to understand the challenges facing battered women, as well as new legal and programmatic strategies that ameliorate domestic violence. Part V further recognizes the need to retain the criminal justice system as a part of intervention efforts, and thus revisits criminal justice practices. Rather than returning to the debate about such practices that assign "emphasis on deterrence through arrest and prosecution" and "individual explanations of marital violence,"[8] this Part suggests criminal justice policies must incorporate an understanding of the political economic determinants of crime and seek to mitigate the conditions that contribute to domestic violence in the first place.[9]

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7. As Virginia Woolf observed, there can be no disconnection between the public world and the private world, except at great risk to both. VIRGINIA WOOLF, IN THREE GUINEAS 169 (1938).

8. Jeffrey Fagan & Angela Browne, *Violence Between Spouses and Intimates: Physical Aggression Between Women and Men in Intimate Relationships*, *in* 3 UNDERSTANDING AND PREVENTING VIOLENCE: SOCIAL INFLUENCES 115, 239 (Albert J. Reiss, Jr. & Jeffrey A. Roth eds., 1994).

9. Jedediah Purdy, *A World of Passions: How To Think About Globalization Now*, 11 IND. J. GLOBAL LEGAL STUD. 1, 20–21 (2004) (describing that political economists "place

Part V concludes by calling attention to the possibilities for developing new alliances, as the shared agendas and common concerns between labor organizations, critical globalization activists, and feminists are set in relief by this paradigm shift.

Finally, it would be unduly facile to posit that domestic violence is entirely attributable to economic dislocation and the inability of men to fulfill received gender roles in the wage-labor force. Reframing the discourse on domestic violence is not a zero-sum game. Rather, it suggests that patriarchy, as one system of power by which battered women are harmed, is often both mediated by—and a function of—economic forces. It also suggests that without a deeper understanding of the determinants of domestic violence, a criminal justice response can do little to end the cycle of violence. Theorizing about domestic violence will no doubt engage feminists and social activists for decades to come. Scholars and activists have moved the matter of domestic violence into legal realms, but have not adequately addressed its political economic determinants. Moreover, a paradigm shift, such as the one advocated on the pages that follow, serves to examine the consequences of global economic policies in ways that are not framed purely in terms of economics.

II. INTERROGATING CONCEPTUAL FRAMEWORKS: PATRIARCHY, LEGAL PARITY, AND CRIMINAL JUSTICE INTERVENTION

Paradigms of domestic violence have long antecedents in American history. The dominant formulation of domestic violence as a social problem first drew significant political and legal attention in the United States in the second half of the nineteenth century.[10]

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economic life within the context of political institutions and political culture, with which they consider it intrinsically interwoven"); *see* Tracey L. Meares et al., *Updating the Study of Punishment*, 56 STAN. L. REV. 1171, 1171–72 (2004) (describing the need for criminal justice practices to be informed by the ways in which macro conditions and social institutions actually affect behavior); *cf.* Sanford H. Kadish, *Fifty Years of Criminal Law: An Opinionated Review*, 87 CAL. L. REV. 943, 962 (1999) ("What policies would the nation be obliged in good conscience to pursue toward ameliorating the criminogenic conditions of life for inner city offenders in order to make punishing them morally sustainable?").

10. *See* ELIZABETH PLECK, DOMESTIC TYRANNY 4 (Univ. of Ill. Press 2004) (1987) (describing colonial Massachusetts in 1640 and 1680, when laws criminalized wife abuse, and the years from 1874 to 1890, when charitable societies took up causes against child abuse and battering). For a thorough examination of the history of domestic violence in the United States before the 1960s, see LINDA GORDON, HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE (1988); DAVID PETERSON DEL MAR, WHAT TROUBLE I

During that period, the developing norms against domestic violence served to limit husbands' authority over their wives but did not challenge the premise of patriarchy within families.[11] Courts acted to constrain acts of domestic violence, but rarely condemned physical punishment by men against women.[12]

In the twentieth century, the question of domestic violence expanded into the realms of public awareness as an outgrowth of the civil rights and women's rights movements during the 1960s and 1970s. The modern movements that developed during these decades introduced new theoretical formulations that rested on a sociopolitical analysis of abuse of women as a distinct form of violence designed to maintain patriarchal hierarchies.[13] These theoretical developments had far-reaching implications for advocacy and policy reform and signaled the re-entry of domestic violence into the public discourse as a social problem worthy of moral condemnation and legal sanctions.[14]

To understand fully the ways in which domestic violence theory has evolved, it is important to first consider the particular ways that the concept of patriarchy has shaped the understanding of, and response to, domestic violence. Next, one must consider the consequences of this development, including the way in which domestic violence has been framed primarily as criminal conduct largely as acts committed by men against women, which then requires efforts to ensure that such acts would be treated on par with

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HAVE SEEN: A HISTORY OF VIOLENCE AGAINST WIVES (1996); and Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2120 (1996).

11. *See* PETERSON DEL MAR, *supra* note 10, at 46 (describing developments that made wife abuse less acceptable in the latter part of the 1800s).

12. *See* State v. Eden, 95 N.C. 693, 696 (1886) ("[O]nly where the battery is so great and excessive as to put life and limb in peril, or where permanent injury to person is inflicted . . . that the law interposes to punish."); State v. Oliver, 70 N.C. 60 (1874) ("If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive."); State v. Rhodes*, 61 N.C. (Phil.) 453, 454 (1868) ("The courts have been loath to take cognizance of trivial complaints arising out of the domestic relations . . . such as master and apprentice, teacher and pupil, parent and child, husband and wife.").

13. *See* G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservation of the Battered Women's Movement*, 42 HOUS. L. REV. 237, 248–49 (2005) (describing the early battered women's movement which challenged male hegemony).

14. *See* Martha Albertson Fineman, *Progress and Progression in Family Law*, 2004 U. CHI. LEGAL F. 1, 8–9 (2004) (noting that a majority of Americans believe that perpetrators of domestic violence should be punished and that victims should be supported).

other crimes. It is then necessary to examine how theories about criminal justice responses have dominated all other responses, and to acknowledge that despite the concerns about the criminal justice paradigm, the debates about domestic violence have been largely confined to criminal justice issues.

A.   *Domestic Violence as a Form of Patriarchy*

The new domestic violence paradigm was exceptional because it bore the traces of the social forces and the political processes from which it emerged. Those who conceptualized violence against women as a social issue often identified personally with the phenomenon of victimization, sometimes as survivors of sexual and physical assaults, and other times as feminists who discerned a structural relationship between physical violence and male power. Many women identified their subordination vis-à-vis gender as linked to sexual objectification by males—an awareness that many hoped would encourage women, collectively, to resist such subjugation.[15] With the emergence of the domestic violence movement, feminists conceived of new modes of resistance to patriarchy that called for organizing women-led grassroots entities designed to protect and empower victims of sexual and physical violence and promised to raise public awareness about violence against women generally.[16] The emphasis was on the identification of women as a group uniquely wronged and disadvantaged who deserved to be made safe by holding their perpetrators accountable.[17] As the movement expanded, domestic violence programs obtained public funding.[18] Consequently, the domestic violence movement was institutionalized

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15. *See* SUSAN BORDO, UNBEARABLE WEIGHT: FEMINISM, WESTERN CULTURE, AND THE BODY 16, 224 (1993).

16. M. Joan McDermott & James Garofalo, *When Advocacy for Domestic Violence Victims Backfires: Types and Sources of Victim Disempowerment*, 10 VIOLENCE AGAINST WOMEN 1245, 1247–48 (2004) (describing the range of services including women-run shelters and telephone hotlines, information, counseling, and referrals).

17. *See* Evan Stark, *Insults, Injury, and Injustice: Rethinking State Intervention in Domestic Violence Cases*, 10 VIOLENCE AGAINST WOMEN 1302, 1303 (2004) (describing the efforts of the battered women's movement to obtain formal legal rights for protection from gender-based violence).

18. Domestic violence programs benefited from federal funds, especially from federal programs associated with the Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 42 U.S.C.).

and internationalized as regional and global symposia and workshops brought women together.[19]

Although this description of the domestic violence movement is not intended to suggest that the movement formed around a monolithic theoretical approach, an unmistakable feminist discourse did emerge early on. This discourse characterized violence against women as a form of misogyny practiced by men for the purpose of subordinating women and to which the State was complicit.[20] Advocates and feminist scholars alike often identified patriarchy as the source of violence against women and advanced the proposition that all women were at "universal risk" as a function of being women in a male-privileged society.[21] Proponents of the gender inequality/patriarchy paradigm characterized intimate relationships between men and women principally as the sites of coercion, control, and abuse of women.[22] Domestic violence was equated with male violence; as one scholar noted, "[M]ale aggression is the mainstay of our cultural images of violence."[23] Indeed, the very concept of women as victims emerged as an identity constructed in relationship to a male partner.[24]

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19. *See* MS. FOUNDATION FOR WOMEN, SAFETY AND JUSTICE FOR ALL: EXAMINING THE RELATIONSHIP BETWEEN THE WOMEN'S ANTI-VIOLENCE MOVEMENT AND THE CRIMINAL LEGAL SYSTEM 1–4 (2003), http://www.ms.foundation.org/user-assets/PDF/Program/safety_justice.pdf [hereinafter SAFETY AND JUSTICE] (noting that the globalization of the domestic violence movement is an unmistakable sign of its achievements).

20. *Id.* at 1.

21. Jeffrey Fagan et al., *Social and Ecological Risks of Domestic and Non-domestic Violence Against Women in New York City* 5, Final Report, Grant 1999-WTVW-0005, National Institute of Justice, U.S. Department of Justice (2003) (reviewing the literature that posited that "all women are equally situated within a patriarchal society, and thus equally likely to be victimized"); *see also* Angela M. Moore Parmley, *Violence Against Women Post VAWA: Where Have We Been, Where Are We Going?*, 10 VIOLENCE AGAINST WOMEN 1417, 1422 (2004) (recounting that much of the research on this topic connects domestic violence to patriarchy).

22. *See* Rebecca Miles-Doan, *Violence Between Spouses and Intimates: Does Neighborhood Context Matter?*, 77 SOC. FORCES 623, 624 (1998) ("The feminist perspective sees the social institutions of marriage and the family . . . as special contexts that may 'promote, maintain, and even support men's use of physical force against women.'" (quoting Michele L. Bograd, *Feminist Perspectives on Wife Abuse: An Introduction*, *in* FEMINIST PERSPECTIVES ON WIFE ABUSE, 11, 11–26 (Michele L. Bograd & Kersti Yllö eds., 1988))).

23. Kersti A. Yllö, *Through a Feminist Lens: Gender, Power, and Violence*, *in* FAMILIES IN THE U.S.: KINSHIP AND DOMESTIC POLITICS 609 (Karen V. Hansen & Anita Ilta Garey eds., 1998).

24. Fagan et al., *supra* note 21, at 2.

To define domestic violence as a social problem was to call for a political response. In an effort to understand the cause and consequences of domestic violence, feminist scholarship often conceived of the problem as a unique form of violence different from other types of crime.[25] The literature differentiated domestic violence as a form of "patriarchal terrorism" and dissimilar from "common couple violence."[26] Advocates turned to the criminal justice system to guarantee the safety of women. They insisted that the failure of the legal system to respond to domestic violence was itself symptomatic of the public apathy and political indifference that tolerated women's inequality and vulnerability to violence.[27] The demands made of the criminal justice system reflected feminist desires to shift cultural norms concerning the legal rights of women.[28]

Thus, the principal theoretical framework that developed for thinking about domestic violence focused on two concepts: challenging patriarchy and demanding legal parity within the criminal justice system. Domestic violence was understood as a manifestation of men's power over women, and since it further involved bodily harm necessarily raised it to the level of a crime.

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25. Fagan & Browne, *supra* note 8, at 118, 132.

26. *See* Michael P. Johnson, *Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women*, 57 J. MARRIAGE & FAM. 283, 291–92 (1995) (defining "patriarchal terrorism" as the systematic and intentional use of physical violence, emotional threats, control, and economic subordination by men against women, while "common couple violence" is defined as the use of force by one or both partners to address a difference of opinion or express frustration or anger). *But see* Kirk R. Williams & Richard Hawkins, *Controlling Male Aggression in Intimate Relationships*, 23 LAW & SOC'Y REV. 591, 594 (1989) (noting that social control perspective has not been pursued in domestic violence literature).

27. Miccio, *supra* note 13, at 272 (noting that criminal justice intervention was understood as "constitutive of safety"). Congressional findings in the Violence Against Women Act of 1994 determined that the overwhelming inadequate response by the states to violence against women resulted in the denial of equal protection of the laws to victims of gender-based violence. *See* H.R. REP. NO. 103-711, at 385–86 (1994) (Conf. Rep.), *reprinted in* 1994 U.S.C.C.A.N. 1839, 1853; S. REP. NO. 103-138, at 38, 41–55 (1993); S. REP. NO. 102-197, at 33–35, 41, 43–47 (1991). Many scholars have recognized that the link between the domestic violence movement and the criminal justice system was forged by advocates as a means to counter, if not correct, the "profoundly inadequate and sometimes hostile response of the criminal justice system to domestic violence cases." Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 803 (2001); *see also* ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 185–86 (2000).

28. *See* Stark, *supra* note 17, at 1303 (noting the similarity to the civil rights movement's demands for formal rights and equal protection).

Domestic violence was made into a matter for the criminal justice system, whereupon the State, through law enforcement agencies, legislatures, the courts, and prisons, acted to punish men for violence against women and thus restored women to their full humanity. By conceptualizing domestic violence as a crime against women that triggered the appropriate legal responses in the form of criminal prosecution, women could begin to dismantle male hierarchy and social subordination based on gender.[29]

B. Domestic Violence and the Demand for Legal Parity

The feminist agenda that demanded legal parity for domestic violence with other crimes found a receptive environment in the law-and-order agenda of the 1970s and 1980s. The domestic violence movement developed into largely a legal movement ensconced within the criminal justice system. Although many states enacted civil remedies in the form of civil protection order statutes, in an environment where political conservatism emphasized punishment, politicians typically favored criminal justice remedies.[30] Activists' mobilization of legal responses unfolded at a time when law enforcement was transformed into a means of governance and a method of social control.[31]

The ensuing legal policies thus focused primarily on police arrest practices.[32] In order to correct the usual practice in which police previously avoided arrests in domestic violence situations, feminist law reformers advocated policies and laws that would encourage—if

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29. *See* Catharine A. MacKinnon, *Sex Equality Under the Constitution of India: Problems, Prospects, and "Personal Laws"*, 4 INT'L J. CONST. L. 181, 186 (2006) (describing how equality laws must consider the social subordination of those groups needing relief).

30. *See* Coker, *supra* note 27, at 803–04 (explaining that the emphasis on criminal responses to domestic violence was in part a result of crime control politics and the willingness of politicians to support crime-fighting measures).

31. *See* Jonathan Simon, *Governing Through Crime*, *in* THE CRIME CONUNDRUM: ESSAYS ON CRIMINAL JUSTICE 171, 171–73 (Lawrence M. Friedman & George Fisher eds., 1997).

32. *See* Barbara J. Hart, *Arrest: What's the Big Deal*, 3 WM. & MARY J. WOMEN & L. 207, 207–09 (1997) (describing the goals of police arrests in domestic violence situations). The law of self-defense also expanded to accommodate the reality of battered women who assaulted or killed their batterers. *See* LENORE E. WALKER, THE BATTERED WOMAN 88–89 (1979) (introducing the battered women syndrome to explain why women did not leave abusive relationships prior to engaging in acts of self-defense); Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 10 (2006) (describing mandatory arrests as one of the key developments of the domestic violence movement).

not mandate—arrests under certain circumstances, including those instances where the victim would not or could not cooperate in the arrest process.[33] Similarly, prosecutors were encouraged to adopt "no-drop" protocols that required prosecution of a defendant in the absence of, or the unwillingness by, the victim to testify or otherwise cooperate.[34] Proponents of criminal justice interventions also urged lawmakers for more severe sanctions against perpetrators of domestic violence [35]

These developments were advanced as a result of feminist desires to move the problem of domestic violence from the margins of social concerns into the mainstream of public consciousness. Such reforms may be properly recognized as the emergence of a new legal field, characterized as possessing "positions," "stakes," and "shared predispositions."[36] New statutes, policies, and protocols gained endorsement from domestic violence activists and advocates and transformed the approach that the legal system adopted toward violence against women.[37] New teams of legal practitioners convened.[38] The authorization of special domestic violence prosecution units combined with lay advocates and victims assistance

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33. *See* Cheryl Hanna, *No Right To Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1859–64 (1996) (describing the push for mandatory arrest policies in domestic violence cases).

34. For an overview of prosecutorial developments in the area of domestic violence, see Miccio, *supra* note 13.

35. *See* Kay L. Levine, *The New Prosecution*, 40 WAKE FOREST L. REV. 1125, 1200 n.231 (2005) ("[P]rosecutors are responding to a 'growing volume of domestic violence complaints and years of pressure from women's groups' by implementing new techniques and seeking harsher penalties in domestic violence cases . . . ." (citation omitted)); *see also* Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1578 n.302 (1998) (providing a listing of states that specify mandatory and enhanced sentences for domestic violence convictions); SAFETY AND JUSTICE, *supra* note 19, at 4 (noting domestic violence advocates demands for enhanced penalties).

36. David M. Trubek et al., *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407, 416–17 (1994) (describing the formation of a legal field).

37. Renée Römkens, *Law as a Trojan Horse: Unintended Consequences of Rights-Based Interventions To Support Battered Women*, 13 YALE J.L. & FEMINISM 265 (2001) ("After thirty years of feminist advocacy and politics, a small but historic change has taken place: domestic violence has entered mainstream international and national politics as a matter of legitimate public concern and has become the subject of various legal regulations in the United States.").

38. *See, e.g.*, The American Bar Association's Commission on Domestic Violence, http://www.abanet.org/domviol/ (last visited Nov. 30, 2006).

units to give impetus to the application of new laws.[39] The effect of these developments on criminal law has been described as a "social development to be remembered."[40]

These legal developments, both in their theoretical origins and their practical application, reflected ways to think about domestic violence. But questions have arisen. Have patriarchy and the demand for legal parity, which together served as the conceptual framework to explain domestic violence, acted to preclude alternative explanatory possibilities and other legal remedies? Do the interventionist strategies that flowed from such a framework contemplate domestic violence after the act, where punishment is conceived as the principal means of prevention? Do such concepts allow for considering domestic violence before the act, in which prevention precludes the need for punishment? These are not necessarily mutually exclusive issues, of course. But they do imply a difference of emphasis, and eventually, this difference in emphasis is sufficiently great to create a difference in kind.

C.   *Criminal Justice Responses to Domestic Violence*

The criminal justice approach that developed from   the conceptual framework of patriarchy and legal parity has revealed the structural weaknesses of the criminal justice system with which it became linked. Domestic violence laws have focused principally on individual transgressors and idiosyncratic explanations for abuser behaviors. Crime policies based on "[s]ituation and context-critical" theories, which consider historical, social, economic, and cultural circumstances that affect behavior, have been all but ignored.[41] Emphasis on prevention and punishment—the values of the criminal justice system—have shaped the strategies and informed the values of the legal response to domestic violence.[42] Such approaches are often far removed from the demands of a civil rights-based advocacy effort that focused on grassroots empowerment and social justice for women and men. These developments suggest a Faustian

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39. McDermott & Garofalo, *supra* note 16, at 1247 (noting that advocates had become "stewards" of the criminal justice infrastructure).

40. Römkens, *supra* note 37, at 265 n.1 (2001).

41. Fagan & Browne, *supra* note 8, at 239–40 (distinguishing between various criminal justice theories that are valued in a jurisprudential setting).

42. *Id.* at 243.

arrangement made by domestic violence advocates in their desire to correct the historic failure of the legal system to address violence against women.

Arrests, prosecutions, and punishment are the essential strategies of criminal justice by virtue of its institutional nature, of course. But for purposes of preventing domestic violence, the strategies that result from a limited conceptualization of patriarchy and parity have revealed themselves to be deficient. Even according to the criminal justice system's stated purpose of deterrence and punishment, criminal intervention does not always deliver the desired results. In some situations, law enforcement systems are often reluctant to respond to domestic violence.[43] The recent U.S. Supreme Court decision in *Town of Castle Rock v. Gonzales*[44] has raised new concerns about the efficacy of the criminal justice response. After years of efforts to develop law enforcement protocols and pass new laws to oblige the arrest of violators of domestic violence orders, the Court ruled that the police were not required to enforce restraining orders, even where state law required enforcement.[45]

On the other hand, vigorous law enforcement practices often raise safety concerns for women. Many women, to be sure, have obtained relief and remedy from the criminal legal system.[46] But in some domestic violence circumstances, arrests and prosecution have increased the likelihood of future violence.[47] For a growing number of women, too, the criminal justice response has resulted in their

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43. *See* Coker, *supra* note 27, at 852 (noting that African American women, Latinas, and poor women have difficulty in obtaining an adequate police response due to unequal treatment by the police); SAFETY AND JUSTICE, *supra* note 19, at 4; TASK FORCE ON LOCAL CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE, DOMESTIC VIOLENCE: KEEPING THE PROMISE 2–9 (2005), http://www.safestate.org/documents/dv_report_ag.pdf (summarizing a range of criminal justice practices in California that are ineffective in keeping women safe).

44. 545 U.S. 748 (2005).

45. *Id.* In *Castle Rock*, the perpetrator killed his daughters during the period that the plaintiff sought police enforcement of the protection order. Although Colorado's state statute required that a police officer "shall use every reasonable means to enforce" a restraining order, the Court ruled that the legislative intent of the Colorado law was actually to permit officer discretion. *Id.* at 761–62.

46. SAFETY AND JUSTICE, *supra* note 19, at 3.

47. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 4–6, 71 (1991); *see also* Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 23 (2004) (observing the dangers of the legal system for women).

own arrest, and if they have children, they are often exposed to threats of intervention by state protective services in child neglect proceedings.[48] Indeed, the criminal justice experience has been less than emancipatory for women. Case anecdotes suggest that women who do not cooperate with law enforcement may be coerced to testify and find themselves subject to threats by prosecutors, including arrest, contempt, and perjury.[49] The ordeal is often no less traumatic than the violence suffered at the hands of the abuser.[50] Despite these findings, there is an increase in policies that mandate or strongly encourage pro-arrest policies, driven by the criminal justice system's focus on the transgressor and the culture of law

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48. *See* Holly Maguigan, *Wading into Professor Schneider's "Murky Middle Ground" Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. U. J. GENDER SOC. POL'Y & L. 427, 442–43 (2003) (noting that there are various theories as to why more women are being arrested, although no definitive reasons have been ascertained); Moore Parmley, *supra* note 21, at 1425 (observing that as a result of interaction with law enforcement, women increase the risk of their own arrests, and the ensuing consequences such as the loss of a job, and the loss of custody of their children); Emily Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1680 (2004) (noting that police often failed to identify the primary aggressor and arrest both parties). Women have faced charges of "aiding and abetting" an abuser's violation of a protection order upon allegations that she established contact with him or failed to report his violations in a timely fashion. *Id.* at 1685–86; *see* Randy H. Magen, *In the Best Interests of Battered Women: Reconceptualizing Allegations of Failure To Protect*, *in* 4 CHILD MALTREATMENT 127, 128 (1999) (noting battered women's exposure to neglect charges and that—in at least four states—child neglect has been redefined to include witnessing domestic violence). *But see* Nicholson v. Williams, 203 F. Supp. 2d 153, 238 (E.D.N.Y. 2002), *question certified by* Nicholson v. Scoppetta, 344 F.3d 154, 169 (2d Cir. 2003), *certified question answered by* Nicholson v. Scoppetta, 820 N.E.2d 840 (N.Y. 2004) (ruling that neglect is not established solely due to the fact that a child has witnessed domestic violence).

49. *See, e.g.*, State v. Finney, 591 S.E.2d 863, 865 (N.C. 2004) (testimony describing prosecutor's threats to arrest victim if she failed to testify and of prosecutor harassment at her workplace to which she attributed the loss of her job); Tejeda v. State, 905 S.W.2d 313, 315 (Tex. Ct. App. 1995) (threats by the prosecutor and judge against a victim to cut off her welfare benefits and hold her in contempt of court if she recanted and left the courtroom during the proceedings).

50. *See* Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between the Truly National and the Truly Local*, 42 B.C. L. REV. 1081, 1091–93 (1999) (reviewing Congressional testimony and state court gender bias reports that detailed the disrespectful and disparaging treatment victims endured during court processes); *see also* Linda Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550 (1999) (arguing that mandatory intervention policies can result in imposing "state violence" on abused women).

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enforcement that registers success by the number of arrests and the rate of convictions, rather than the improved safety of women.[51]

Other concerns that are not adequately considered in the framework of patriarchy and legal parity often serve as disincentives for battered women to appeal to law enforcement as a means of remedy. A woman financially dependent on an abuser, and thus obliged to remain with him, may be disinclined to bring criminal charges.[52] Often, women love their partners and view their relationships as more complex than the dynamic of victim and abuser. Lesbians, gay men, and transgendered victims of battery often fear discriminatory treatment by police, prosecutors, and the courts, and are therefore disinclined to endure the sensationalism frequently visited on same-sex couples.[53] African-American women, Latinas, and impoverished women from communities with a history of abusive encounters with the criminal justice system are frequently reluctant to seek criminal remedies.[54] Battered undocumented immigrants are similarly disinclined to expose their immigration status by contacting the police, particularly if they are dependent on the abuser for their lawful residency.[55] Additionally, a battered immigrant woman is unlikely to risk deportation of her abuser if he is similarly undocumented.[56]

Criminal justice responses have also failed to meet community needs. One report suggests that domestic violence law reform has led to an expanded oppressive police presence that "decimate[s] poor communities and communities of color," increases the rate of incarceration, and further impairs the ability of communities to

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51. *See* Erin L. Han, *Mandatory Arrests and No Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. 159, 174 (2003) (noting a national increase in mandatory arrest policies); Römkens, *supra* note 37, at 281–83 (arguing that the fixation on successful prosecution rates has trumped, and perhaps eviscerated, the goal of protecting women).

52. *See* Moore Parmley, *supra* note 21, at 1425 (noting the financial hardships that follow criminal justice interventions in domestic violence).

53. *See* Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming a Domestic Sphere While Risking Negative Stereotypes*, 8 TEMP. POL. & CIV. RTS. L. REV. 325, 346–47 (1999); Ruthann Robson, *Incendiary Categories: Lesbians/Violence/Law*, 2 TEX. J. WOMEN & L. 1, 2 (1993).

54. *See* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1257 (1991) (noting that women of color choose not to call the police for fear of suffering the reaction of a hostile police force).

55. *See* Leslye E. Orloff et al., *Battered Immigrant Women's Willingness To Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43, 68, 77–79 (2005).

56. *Id.*

develop internal means of social control.[57] Efforts to improve outcomes for domestic violence victims through arrests, prosecution, and punishment have largely ignored the problem of racism and abusive practices emblematic of the criminal justice system.[58]

The domestic violence movement itself has suffered a loss of momentum as criminal justice policies have emerged as the primary intervention strategy. Resources are disproportionately allocated to police and prosecutors to the detriment of domestic violence prevention programs.[59] Grassroots advocates, who once aspired to change cultural norms under which women were subjugated, now often serve as victims' assistants for prosecutors and are fully integrated into the criminal justice system.[60] All of these difficulties raise larger issues having to do with the degree to which responses to domestic violence have become captive to the criminal justice approach as an inevitable outcome of the theoretical framework within which intervention is sought. Criminal justice intervention has produced troubling results for individual victims, the communities in which they live, and the domestic violence movement generally.[61]

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57. SAFETY AND JUSTICE, *supra* note 19, at 15; *see also* Coker, *supra* note 27, at 852–54 ("[A]ggressive policing in communities of color is partially to blame for the disproportionate number of African American, Latino, and [poor] men in prison."). Coker notes the "twin problems of aggressive policing and under-policing that plague poor minority neighborhoods." *Id.* at 852. Maguigan, *supra* note 48, at 432 (noting the warnings issued about the dangerous consequences of investing in the criminal justice system as a means to combat domestic violence because of the threats such a system poses for women of color in low-income communities).

58. Maguigan, *supra* note 48, at 432 (observing that the domestic violence movement has "sidestepped" the racist impact of law enforcement); SAFETY AND JUSTICE, *supra* note 19, at 12.

59. The Violence Against Women Act funding formula directs that at least fifty percent of the funding goes to law enforcement. Only thirty percent is earmarked for victim services. Other grants are specifically earmarked to develop pro-arrest policies. *See* NATIONAL TASK FORCE TO END SEXUAL AND DOMESTIC VIOLENCE AGAINST WOMEN, THE VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT OF 2005, H.R. 3402, at 2–3 (2006), *available at* http://nnedv.org/VAWA/VAWA2005Summary.PDF.

60. *See* McDermott & Garafolo, *supra* note 16, at 1249–50 (noting the institution-alization of advocacy focused on the punishment of the defendant).

61. As Holly Maguigan noted, "It is not that some people did not foresee these consequences, but rather that the majority of advocates failed to heed the warning of activists like Professor Beth Richie," who early on warned about the dangers of relying on law enforcement to remedy domestic violence. Maguigan, *supra* note 48, at 432; *see also* Beth E. Richie, *A Black Feminist Reflection on the Antiviolence Movement*, 25 SIGNS 1133, 1136–37 (2000) (observing that the women's anti-violence movement had ignored police racism in communities of color).

Proponents of criminal justice strategies justify these measures as necessary protectionist strategies on behalf of the victim.[62] The ensuing problems cannot be so readily dismissed, however.[63] The domestic violence paradigm that relies on a law-and-order model does little to address the concerns of those who doubt the efficacy of incarcerating defendants or those who voice concern for the due process rights of perpetrators.[64] Issues of mitigation and rehabilitation, matters central to a humane and rational criminal justice policy, have all but vanished from the discourse within the domestic violence movement that promotes criminal justice responses.[65] These developments suggest a repudiation of the values associated with the civil rights struggles from which the movement originated. Indeed, the relationship between the battered women's groups and the State "continues to sap energy from the grassroots shelter organizations, narrow their political agenda, and alienate the advocates from potential allies in other facets of the justice struggle."[66] Domestic violence law reform has come to share the defects of the criminal justice system.

D.   *Critiques of Legal Developments*

Sufficient time has passed to permit scholars to evaluate the outcomes of these legal reforms. A body of critical domestic violence scholarship and activism has emerged to challenge the prevailing

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62. *See generally* Hanna, *supra* note 33, at 1895, (arguing that failure to prosecute domestic violence may result in re-battering of victims); Donna Wills, *Domestic Violence: The Case for Aggressive Prosecution*, 7 UCLA WOMEN'S L.J. 173 (1997).

63. *See* Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 6–7 (2002) (critiquing the State's protectionist and conservative responses to victims of gender-based violence).

64. *See* Leti Volpp, *Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573, 1586 (1996) (noting that the domestic violence movement has organized around the belief that defending the rights of the perpetrator will not serve justice); Wills, *supra* note 62, at 177, 181 (characterizing victims who do not want to pursue criminal justice strategies as lacking the capacity to determine their best interests).

65. Goodmark, *supra* note 47, at 39–40 (observing the failures of the legal system to counsel or teach incarcerated fathers to be better parents). Exceptions to this are alternative responses to crime, such as restorative justice models. *See generally* Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1 (1999); C. Quince Hopkins et al., *Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities*, 23 ST. LOUIS U. PUB. L. REV. 289 (2004).

66. Stark, *supra* note 17, at 1305.

domestic violence/criminal justice paradigm.[67] The first critiques advanced by critical race feminists and queer theory scholars challenged the universality of the experience of battered women. Indeed, this scholarship has suggested that the convergence of interests between the domestic violence movement and the criminal justice system has been largely illusory.[68]

Some advocates who have criticized the criminal justice system have either renounced mandatory protocols or proposed alternative policies and practices to improve their outcomes.[69] Others have suggested improving training for police, relying on evidence-based prosecution to avoid coercing testimony of battered women, training child protection workers, and improving data collection to measure criminal intervention outcomes.[70] At the same time, others have warned of the dangers of an alliance between critical domestic violence scholars with those who protest that women manipulate claims of domestic violence to obtain unfair advantages in divorce or custody matters.[71] These theorists have also issued caveats against eliminating mandatory policies for fear of reviving those retrograde practices when the police failed to respond to violence against

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67. *See* SAFETY AND JUSTICE, *supra* note 19; *see also supra* notes 45–52 and accompanying text.

68. For an overview of critical race feminist, queer scholarship, and other works questioning the usefulness of a one-size-fits-all model of domestic violence, see generally Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery, and Stereotypes: The African American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003 (1995); Crenshaw, *supra* note 54; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Margaret A. Nosek et al., *Abuse of Women with Disabilities: Policy Implications*, 8 J. DISABILITY POL'Y STUD. 157, 163 (1997); Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, *in* CRITICAL RACE FEMINISM: A READER 229 (Adrien Katherine Wing ed., 1997); Ruthann Robson, *Lavender Bruises: Intra-lesbian Violence, Law and Lesbian Legal Theory*, 20 GOLDEN GATE U. L. REV. 567 (1990); Karin Wang, *Battered Asian American Women: Community Responses from the Battered Women's Movement and the Asian American Community*, 3 ASIAN L.J. 151 (1996).

69. Sack, *supra* note 48, at 1687–88 (suggesting that mandatory policies might be improved with additional research and studies).

70. *Id.* at 1723–25 (describing training strategies for police, evidence-based prosecution strategies for prosecutors to avoid coercing testimony of battered women, and the strides made to train child protection workers to avoid unnecessary "failure to protect" charges).

71. *See* Stark, *supra* note 17, at 1302 (observing that conservative opponents of criminal sanctions in domestic violence matters share a set of criticisms with progressive scholars); *see also* Sack, *supra* note 48, at 1659, 1710–11 (warning about attacks by "men's rights groups and pseudofeminists' attacks" and a "throwback to . . . old conception[s] of domestic violence").

women and prosecutors refused to proceed with charges.[72] They too have raised well-placed concerns that violence against women will again be considered a private matter beyond the reach of public sanctions.[73] Some have cautioned that "the principle of patriarchal control [as a facet of domestic violence] is in danger of being lost altogether."[74]

In the ensuing dialogue, critics have raised new questions. Have domestic violence advocates relied unduly on the State? Is it possible to alter the relationship with police and prosecutors? Do racism, bias against the poor, and authoritarianism constitute immutable characteristics of the criminal justice system, and hence preclude all reasonable expectation of remedy for battered women?[75]

These questions are fully relevant to the critique of the domestic violence/criminal justice paradigm, and they are necessary to improving the conditions for battered women. But they do not expand beyond the paradigm to interrogate the determinants of domestic violence. These questions do not sufficiently consider the changed circumstances that have demonstrated that patriarchy alone is not an adequate explanation for domestic violence. Nor do they link the relationship between the private spaces of the household and the public spaces of the political economy that has bearing on violence against women.

Despite the growing critique of the current domestic violence paradigm, the discourse has not expanded beyond the theoretical framework of patriarchy and legal parity that now serve as the premise and the proof. With few exceptions, the current critical dialogue delineates vantage points, relationships, and concerns wholly within the boundaries of the criminal justice system. Socio-economic analyses of the economic structures of communities and households as contexts for domestic violence are largely absent from the debates. In this regard, critiques suffer from what has been

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72. Sack, *supra* note 48, at 1688–89.

73. *See* Stark, *supra* note 17, at 1303 (noting that the domestic violence movement has used principles and strategies of the civil rights movement to obtain formal rights for victims).

74. Jody Raphael, *Rethinking Criminal Justice Responses to Intimate Partner Violence*, 10 VIOLENCE AGAINST WOMEN 1354, 1357 (2004) (citing SCHNEIDER, *supra* note 27).

75. *See* Stark, *supra* note 17, at 1302 (noting that a hallmark of the battered women's movement has been the ongoing struggle about its relationship to the state).

described as "wasted knowledge," that is, "the failure of known facts to inform public debate."[76]

The use of criminal sanctions has been a critical, and indeed even a necessary, response to violence against women, of course. However, in the pursuit of parity with other crimes, the modern domestic violence paradigm has obscured important issues that contribute to an understanding of this social ill. The current critique must do more than debate the strengths and weaknesses of law-and-order responses. Instead, a paradigm shift is required, one that considers the multi-faceted circumstances that contribute to domestic violence and examines those factors relevant to the behavior traits of perpetrators. In fact, many of these behaviors cannot be remedied by arrests and incarceration. Only after such socio-economic analyses are incorporated into an understanding of domestic violence can criminal justice remedies be meaningfully reformed.[77]

To this end, this Article proceeds to expand domestic violence theories to consider the conditions of life as lived by those experiencing domestic violence—that is, to direct attention to economic hardship and the demise of community resources as social conditions by which domestic violence is both cause and effect. It endeavors to integrate patriarchy as a concept of hierarchy into current social, political, and economic developments. It does so by demonstrating the ways that communities experience global economic developments, and ultimately reproduce that development in the private realm of home and family.

III. POSITING THE LINKAGES BETWEEN GLOBAL POLITICAL ECONOMY AND DOMESTIC VIOLENCE

To reinvigorate the debate surrounding the domestic violence discourse, analysts must expand their range of vision beyond patriarchal determinants and criminal justice interventions to contextualize domestic violence within the political economy. The research agenda for domestic violence must include the implications of socio-economic transformations in a vast number of communities

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76. *See* Henri Astier, *The World from France*, TIMES LITERARY SUPPLEMENT, Mar. 18, 2005, at 6 (describing the French philosopher Jean-François Revel's use of the term "connaissance inutile" to describe this phenomenon).

77. *See infra* notes 265–85 and accompanying text.

and households. To consider the relationship between global developments and domestic violence does not, of course, reduce the importance of existing theories related to patriarchy. Nor does it minimize the role of individual agency in criminal behaviors. Rather, it provides a more nuanced understanding of the relationship between those socio-economic forces that insinuate themselves into neighborhoods and households, there to produce chronic stress, instability, and fear—all circumstances associated with domestic violence.

This Part provides an overview of the significant economic transformations beginning in the second half of the twentieth century that have occurred in communities throughout the United States and that have resulted in plant closings and a loss of work opportunities. It compares the conditions in communities and households where economic resources are sufficiently stable with those towns and families who suffer chronic unemployment and economic strain. Economic loss devastates neighborhoods and creates community characteristics associated with increased violence and rising crime rates. These same characteristics permeate households, affect individuals, and produce a range of symptoms, syndromes, and behaviors, including domestic violence.

A. Political Economies in Transition: Context and Consequences

A brief examination of the global economy is necessary to provide the context for the relationship between domestic violence and market forces. Globalization has been experienced largely as an economic process facilitated by technological advances and deregulation that has transformed the "spatial organization of social relations and transactions."[78] The shifts in the development of the global economy have affected all regions of the world.[79] In some

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78. DAVID HELD ET AL., GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS, AND CULTURE 16 (1999); *see also* Alex Y. Seita, *Globalization and the Convergence of Values*, 30 CORNELL INT'L L.J. 429, 455–56 (1997) (describing the importance of technology in communicating values).

79. For an overview of globalization policies as a source of poverty, see Robert McCorquodale & Richard Fairbrothersee, *Globalization and Human Rights*, 21 HUM. RTS. Q. 735 (1999); Juan Forero, *Latin America Looks Leftward Again*, N.Y. TIMES, Dec. 18, 2005, § 4, at 4 (noting increased poverty and inequality as a result of the economic liberalization policies of the IMF and the World Bank throughout Latin America); Judith Miller, *Globalization Widens Rich-Poor Gap, U.N. Report Says*, N.Y. TIMES, July 13, 1999, at A8

less-developed countries, the transition to an export economy and the introduction of free trade have contributed to environmental degradation, as well as ethnic, religious, and racial violence.[80]

The effects of global transformations are no less dramatic in the United States.[81] Americans have experienced globalization as a structural transformation whereby the once industry-based economy has evolved into a post-industrial and service-dominated market.[82] Though this transformation has had far-reaching repercussions for American workers and their families, it has been especially onerous for entire communities that have suffered the loss of manufacturing employment that once sustained households over successive generations. Manufacturing employment is currently near a fifty-five year low.[83] What had been prevailing episodic unemployment in many communities has developed into a chronic condition.[84]

Even for those who have remained employed, job security is uncertain, wages have declined, and health and pension benefits, once considered the mainstay of the waged economy, have been

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(noting that sixty countries were worse off in 1999 than they had been in 1980 and were falling even further behind).

80. *See* Kim Moody, *NAFTA and the Corporate Redesign of North America*, 22 Latin Am. Persp. No. 1, at 109–10 (1995) (noting that the American Medical Association described Ciudad Juárez as a "virtual cesspool" following its transition to an export zone). For a description of recurrent violence in countries caught up in economic liberalization projects, see ANNE ORFORD, READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW 106 (2003); *see also* AMY CHUA, WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY 9 (2003); Randall Peerenboom, *Out of the Pan and into the Fire: Well-Intentioned but Misguided Recommendations To Eliminate All Forms of Administrative Detention in China*, 98 NW. U. L. REV. 991, 1048 (2004).

81. *See* Trubek et al., *supra* note 36, at 408 (noting the lack of a "bright line" between the global and national).

82. *See* BRIAN PHILLIPS, GLOBAL PRODUCTION AND DOMESTIC DECAY, at xxii (1998) (noting that the decline in manufacturing employment since the 1950s has produced unemployment, reduction in wages, and relocation of workers and their families); John Gaventa, *From the Mountains to the Maquiladoras: A Case Study of Capital Flight and Its Impact on Workers*, *in* COMMUNITIES IN ECONOMIC CRISIS: APPALACHIA AND THE SOUTH 85 (John Gaventa et al. eds., 1989).

83. *Manufacturing Update: December 2005*, Working for America Institute, http://www.workingforamerica.org/documents/manuupdate.htm.

84. *See* Elizabeth Warren, *The New Economics of the American Family*, 12 AM. BANKR. INST. L. REV. 1, 21 (2004) (observing that "[i]n the past twenty-five years, the chances that a worker will be laid off, downsized, or restructured out of a paycheck have increased substantially" and that "the odds that a worker would suffer an involuntary job loss have increased by 28 percent since the 1970s").

sacrificed in the face of threats of plant closings and relocations.[85] Labor unions have been weakened by company threats to relocate overseas unless workers accept wage and benefit   reductions.[86] Indeed, as Vicki Schultz has observed, "declining job security is one of the hallmarks of the new economic order."[87]

As a result of these developments, the relationship between economic globalization and human rights has been the subject of scholarly works and debates.[88] Additionally, global protests have called upon the World Trade Organization to protect labor rights, safeguard the environment, and defend human rights.[89] Such discontent has been the basis for a discourse that links trade and social regulation in the realm of environmental protection, labor rights, rights to health, security, and the right to be free from all forms of violence.[90]

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85. *See* M. Patricia Fernández-Kelly, *Underclass and Immigrant Women as Economic Actors: Rethinking Citizenship in a Changing Global Economy*, 9 AM. U. J. INT'L L. & POL'Y 151, 167 (1993) (observing the relationship between the "deterioration in the standard of living for working-class Americans" and the increased use of subcontracting and plant closings); Sanford M. Jacoby, *Melting into Air? Downsizing, Job Stability, and the Future of Work*, 76 CHI.-KENT L. REV. 1195, 1203 (2000) (describing the expansion of temporary jobs and the decline in health insurance coverage and pension benefits for workers); Karl Klare, *The Horizons of Transformative Labour and Employment Law*, *in* LABOUR LAW IN AN ERA OF GLOBALIZATION, TRANSFORMATIVE PRACTICES, AND POSSIBILITIES 3, 16–17 (Joanne Conaghan et al. eds., 2002) (noting the decline in "high-attachment, long-term employment relationships"); Editorial, *Another Marie Antoinette Moment*, N.Y. TIMES, Jan. 2, 2006, at A12 (reporting on exorbitant corporate profits funneled to CEOs exacted from cost cutting measures such as reduced health care, retirement benefits, layoffs, and plant closings); Roger Lowenstein, *The End of Pensions?*, N.Y. TIMES, Oct. 30, 2005, § 6, at 56.

86. *See* Steven Greenhouse, *The New Face of Solidarity*, N.Y. TIMES, June 16, 2006, at C1 (noting that companies, such as Delphi, have demanded that workers accept a fifty percent cut in hourly wages under threat of relocating outside the United States).

87. Schultz, *supra* note 4, at 1924.

88. *See* Sungjoon Cho, *Linkage of Free Trade and Social Regulation: Moving Beyond the Entropic Dilemma*, 5 CHI. J. INT'L L. 625, 627 (2005) (noting the vast literature on trade and social regulation).

89. *See* Clyde Summers, *The Battle in Seattle: Free Trade, Labor Rights, and Societal Values*, 22 U. PA. J. INT'L ECON. L. 61, 61 (2001).

90. *See* U.N. Econ. & Soc. Council, High Comm'r for Human Rights, *Globalization and Its Impact on the Full Enjoyment of Human Rights*, U.N. Doc. E/CN.4/2002/54 (Jan. 15, 2002) (noting that the World Trade Organization rules on agriculture may impinge on human rights, such as the rights to food, development, health, and other rights of particular groups); Marco C.E.J. Bronckers, *More Power to the WTO?*, 4 J. INT'L ECON. L. 41, 53–56 (2001) (suggesting that the WTO consider other social issues such as labor and environmental protection); *see also* Christian Barry & Sanjay G. Reddy, *International Trade and Labor Standards: A Proposal for Linkage* (Dec. 1, 2006), *available at* http://ssrn.com/abstract=799924 (presenting "a proposal for linking trade and labor standards").

Feminist scholars have contributed to the debate by identifying the relationship between the global economy and the circumstances in which women live their lives. Rejecting the notion that globalization is a gender-neutral phenomenon, researchers have demonstrated that women have disproportionately suffered bleak working conditions, forced migration, sex and labor trafficking, changes to family structures, and violence.[91] Women's responsibilities have, by necessity, expanded beyond the realm of domestic care and into the workplace in response to both the need for low-cost laborers and the material needs of households.[92] Economic shifts have rearranged traditional household norms, and modifications to time-honored gender roles have overtaken the process of cultural adaptation.

The literature that examines the impact of global economics on gender relations focuses principally on women as subordinated workers in export zones and transnational factories.[93] Scholars have paid less attention to the effects of economic globalization policies on family relationships at the household level.[94] To appreciate fully how current economic shifts in the United States serve as a source of gender-based violence—the focus of this Article—it is necessary to examine the dynamics of wage labor and the consequences of its loss on communities and individuals.

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91. *See* Fernández-Kelly, *supra* note 85, at 157–64; Martha Albertson Fineman, *Contract and Care,* 76 CHI.-KENT L. REV. 1403, 1406 (2001) (describing the burdens of "the privatization of dependency" as an outgrowth of recent public policies and welfare reform); PHILLIPS, *supra* note 82, at 4 (describing extreme intensity of working conditions affecting women workers disproportionately in free-trade zones). For an example of how women experience the disproportionate burden, see Prishani Naidoo, *Eroding the Commons: Prepaid Water Meters in Phiri, Soweto*, PUBLIC CITIZEN, Sept. 14, 2003, http://www.citizen.org/cmep/Water/cmep_Water/reports/southafrica/articles.cfm?ID=119 91 (pointing out that the shift to prepaid water meters and water-delivery businesses has introduced disproportionate difficulties for women).

92. *See* Fernández-Kelly, *supra* note 85, at 167–68.

93. *Id.* at 157–64; PHILLIPS, *supra* note 82, at 4.

94. Some scholars have linked domestic violence and economic concerns, largely expressed as a function of woman's economic dependency that prevents her from leaving an abuser. *See* Coker, *supra* note 27, at 805, 819; Christine Thomas, *Advancing the Economic Rights of Domestic Violence Survivors in Protection Order Proceedings*, BATTERED WOMEN'S JUSTICE PROJECT (2003), *available at* http://www.ncdsv.org/images/AdvancingEconomic RightsDVSurivvors.pdf (arguing that victims are entitled to economic relief in protection order proceedings). For a discussion of the effects of globalization on the household, see Kenneth G. Dau-Schmidt & Carmen Brun, *Protecting Families in a Global Economy*, 13 IND. J. GLOBAL LEGAL STUD. 165 (2006).

B.   *Uncertainty in the Workplace: Implications for Violence in the Household*

1. Work as social stability

Values of self-sufficiency, initiative, and liberty associated with the ideal of productive labor are deeply ingrained in the American ethos.[95] Indeed, the dominant cultural norm of work pervades systems of national morality. This norm privileges people with paying jobs and recognizes them as individuals who possess sufficient discipline, determination, and worth to claim the fruits and benefits of the market and the State.[96] Unemployed Americans, especially unemployed American men, are often considered failures or otherwise defective for their inability or unwillingness to support themselves and their families through productive economic means.[97]

The opportunity to work makes possible an expansive set of benefits, both material and moral. Gainful employment provides the wage, the basis of daily life, and the structure by which men and women order their world.[98] Waged labor promises a sense of self-worth, a feeling of well being, and the opportunity to establish social networks.[99] Workers develop contacts and information channels as a form of social capital; they have opportunities to exercise social skills

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95. *See* Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 530–31 (1997).

96. *See* Daniel V. A. Olson, *Dimensions of Cultural Tension Among the American Public*, *in* CULTURAL WARS IN AMERICAN POLITICS 237, 240 (Rhys H. Williams ed., 1997).

97. *See* ROBERT E. GOODIN ET AL., THE REAL WORLDS OF WELFARE CAPITALISM 42 (1999) ("If the market fails to reward certain people very much . . . those people do not make very much of a contribution that other people value very much."); *see also infra* Part IV.

98. *See* Philip Harvey, *The Right To Work and Basic Income Guarantees: Competing or Complementary Goals?*, 2 RUTGERS J.L. & URB. POL'Y 4, 13 (2005) ("[Paid employment] is a 'source of social relations,' a 'means to self-realization,' and 'a basis of self-respect.'" (quoting Nanna Kildal, *The Social Basis of Self-Respect: A Normative Discussion of Policies Against Unemployment*, 54 THESIS ELEVEN (1998))); Margaret Bull Kovera, *Psychology, Law, and the Workplace: An Overview and Introduction to the Special Issue*, 28 LAW & HUM. BEHAV. 1, 1 (2004) (noting that survey results show that the average person in the United States spends significant portions of his or her life in the workplace).

99. *See* Harvey, *supra* note 98, at 13; *see also* THOMAS J. COTTLE, HARDEST TIMES: THE TRAUMA OF LONG TERM UNEMPLOYMENT 9 (2001) (noting that work informs self-assessments and assessments of others).

by which a range of needs both within and outside of the workplace are met.[100]

   This is not to ignore the workplace as a potential site for worker exploitation and subordination.[101] Although the workplace is a potential site for such worker exploitation and subordination, as a general matter, people need work "for the rewards it brings, both tangible and intangible."[102] Research on workplace relationships demonstrates the frequency with which co-workers develop nurturing and supportive friendships.[103] Individuals are influenced and constrained by these relationships, and it is through these networks that interpersonal trust and social interaction flourish. Communities benefit from the exchange of social capital between individuals that further facilitates added leveraging of resources, improved economic development, reduced unemployment and crime rates, and increased civic and political engagement.[104]

2. Communities without work

   The social cost to communities of chronic unemployment has been the subject of increasing concern and research.[105] Scholars report profound consequences indicating that "work is embedded in relationships and structures that transcend formal economic processes, as it is set in communities with their own histories, geographies, and social relations."[106] William Julius Wilson chronicles the gradual decline of neighborhoods that experienced industrial

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   100.   *See* Peter Cappelli, *Why Do Employers Retrain At-Risk Workers? The Role of Social Capital*, 43 INDUS. REL. 421, 425 (2004) (detailing the ways social capital affects employees at work); Harvey, *supra* note 98, at 14–15 (noting that employment facilitates individual development opportunities). *See generally* James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. OF SOC. S95, S97–S100 (1998) (describing forms and functions of social capital).

   101.   *See infra* notes 213–17 and accompanying text.

   102.   Karst, *supra* note 95, at 531.

   103.   *See* Stephen R. Marks, *Intimacy in the Public Realm: The Case of Co-workers*, 72 SOC. FORCES 843, 850 (1994).

   104.   *See* Coleman, *supra* note 100, at 104–05; Robert Judge, *The Difference that Gender Makes: Social Capital, Gender, and Political Participation*, 6 HORIZONS 65, 65 (2003) (reviewing ROBERT PUTNAM, BOWLING ALONE (2000)); Schultz, *supra* note 4, at 1888.

   105.   *See* Benedict Sheehy, *Corporations and Social Costs: The Wal-Mart Case Study*, 24 J.L. & COM. 1, 3 (2004) (defining social costs as those problems that result from business activity and cause uncompensated harm to society).

   106.   William W. Falk et al., *Introduction*, *in* COMMUNITIES OF WORK xv (William W. Falk et al. eds., 2003).

restructuring during the latter part of the twentieth century as a "cumulative process of economic and social dislocation."[107] He describes a well-recognized pattern that follows the closing of a large factory: increased joblessness and a succession of business closings as a consequence of deindustrialization.[108]

Municipal infrastructures that previously served as the context by which daily life was experienced have deteriorated in the wake of plant closings. Social services have also diminished as tax revenues have declined, while needs have increased.[109] Deindustrialization has contributed to the loss of affordable housing, high rates of foreclosures, and the deterioration of neighborhoods as property values decline.[110] Cities and towns throughout the United States have suffered declining populations and a disappearing tax base because they are no longer capable of providing opportunities for economic well being.[111]

Economic insecurity has also had a corrosive effect on community identity.[112] The humiliation, despair, and hopelessness

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107. WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS 34 (1996).

108. *See id.* at 5; *see also* OREN M. LEVIN-WALDMAN, PLANT CLOSURE, REGULATION, AND LIBERALISM 3 (1992). Other studies have also demonstrated how one plant closing triggers a rippling fiscal crisis as local supply chains and commercial centers experience a related slump in business. *See* Leslie Hossfeld et al., *The Economic and Social Impact of Job Loss in Robeson County, North Carolina 1993–2003*, 2 SOCIATION TODAY 2 (2004), *available at* http://www.ncsociology.org/hossfeld.htm (studying the ripple effect of plant closings causing additional job losses and indirect reduction in household income).

109. *See* LEVIN-WALDMAN, *supra* note 108, at 23; John Russo & Sherry Lee Linkon, *Collateral Damage*, *in* BEYOND THE RUINS 201, 202 (Jefferson Cowie & Joseph Heathcott eds., 2003) (studying the collapse of Youngstown, Ohio in the late 1970s through 1980s).

110. *See* NORTH CAROLINA ALLIANCE FOR ECONOMIC JUSTICE, NOT MAKING IT: NORTH CAROLINA VOICES ON JOBS & UNEMPLOYMENT 6, 11 (Jan. 2005), *available at* http://www.ncjustice.org/media/library/178_ncaejncvoices.pdf [hereinafter NORTH CAROLINA VOICES] (noting that one affected North Carolina county had one of the highest mortgage-foreclosure rates in the state, a long waiting list for public housing, and little assistance from the public housing authority); PHILLIPS, *supra* note 82, at 43–44; Russo & Linkon, *supra* note 109, at 202 (recording the correlation between plant closings and homes lost to arson); Jacob S. Hacker, *The Privatization of Risk and the Growing Economic Insecurity of Americans* (Feb. 14, 2006), http://privatizationofrisk.ssrc.org/Hacker (noting that mortgage foreclosure rates increased threefold since the early 1980s and ninefold since the early 1950s).

111. *See* CARRIE R. LEANA & DANIEL C. FELDMAN, COPING WITH JOB LOSS 36 (1992); PHILLIPS, *supra* note 82, at xv; NORTH CAROLINA VOICES, *supra* note 110, at 11.

112. *See* Fagan et al., *supra* note 21, at 10 (highlighting the devastating effect that economic disinvestment and de-industrialization have upon community life); Russo & Linkon, *supra* note 109, at 202 (describing the loss of collective self-esteem that is experienced when communities lose population and fail to rebuild their economies).

that follow loss of work can be devastating to a downwardly mobile populace, causing a collective diminution of self-worth.[113] Even in communities where jobs are replaced, a sense of security and community identity is lost.[114] Commentators who have studied the aftermath of deindustrialization have noted the desperation that often seizes hold of entire communities.[115] Cities that have experienced plant closings often suffer a type of moral stigmatization not dissimilar to that experienced by unemployed individuals.[116]

Such economic instability produces a cultural shift that often results in social disorganization attended by uprootedness and weakened social controls.[117] As social capital deteriorates, vulnerable groups are especially susceptible to the harms of downward turns of the economy.[118] As wage inequality increases, intergroup polarization deepens.[119] Trade assistance programs that differentiate between categories of dislocated workers who are eligible for benefits have created resentment among the unemployed who do not qualify for such programs.[120] The combined effect of the intergroup

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113. *See* NORTH CAROLINA VOICES, *supra* note 110, at 17; JOHN C. RAINES & DONNA C. DAY-LOWER, MODERN WORK AND HUMAN MEANING 39 (1986) (describing a culture of disappointment and fatalistic world view that develops when jobs are lost).

114. *See* Editorial, *Hard To Say Goodbye*, N.Y. TIMES, June 12, 2006, at A16 (describing the community of Newton, Iowa reacting to the closure of the Maytag factory).

115. *See* Russo & Linkon, *supra* note 109, at 203; *see also* LEVIN-WALDMAN, *supra* note 108, at 3 (noting that political, civic, and business decisions whether to raise taxes are often skewed by the fear of discouraging future investments).

116. *See* Karst, *supra* note 95, at 534 (observing that the absence of waged labor means shame); Russo & Linkon, *supra* note 109, at 203 (describing how Youngstown, Ohio became a scapegoat for the steel plant closings and consequential economic losses, and "[came] to accept failure as its due").

117. *See* CLIFFORD R. SHAW & HENRY D. MCKAY, JUVENILE DELINQUENCY AND URBAN AREAS 315 (rev. ed. 1969) (identifying structural factors that produce social disruption leading to high crime rates); Tracey L. Meares, *Praying for Community Policing*, 90 CAL. L. REV. 1593, 1603 (2002); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1285 (2004).

118. *See* CLIFFORD L. BROMAN ET AL., STRESS AND DISTRESS AMONG THE UNEMPLOYED 14, 94 (2001) (noting that less educated black workers experience the greatest distress from job loss); LEANA & FELDMAN, *supra* note 111, at 8–9 (reporting that older workers, women, and minorities are less likely to be rehired after plant closings); *see also* Philip Harvey, *Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously*, 33 COLUM. HUM. RTS. L. REV. 363, 432–33 (2002) (reporting a disparate impact on African-Americans and other disadvantaged groups).

119. *See* PHILLIPS, *supra* note 82, at 43–44 (describing increasing wage inequality); Karst, *supra* note 95, at 538–39 (describing "the crisis of work in the perspective of the constitutional value of equality").

120. NORTH CAROLINA VOICES, *supra* note 110, at 11.

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polarization and the resentment is to weaken social solidarity networks.

As social solidarity networks erode, so too does their prophylactic effect on community crime rates.[121] The effects of this erosion, such as abandoned neighborhoods, vacant commercial centers, and the lack of opportunities to engage in productive endeavors, often result in increased vandalism, theft, robberies, and drug abuse in communities that previously avoided noticeable crime rates.[122] Indeed, as social networks disintegrate, the risk of violent crime, including domestic violence, appreciates considerably.[123]

3. Community characteristics and domestic violence

The consequences of deindustrialization—economic disadvantage, social fragmentation and disorganization, high residential mobility, and neighborhood instability—are also conditions associated with increased domestic violence.[124] Decreased opportunities for neighbors and coworkers to provide social support, reduced police presence, and diminished social services have been linked to community crime generally, and especially to family dysfunction, including an increased risk of intimate partner violence.[125] The demise of social capital, which, as Jeffrey Fagan

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121. Gary L. Bowen et al., *Neighborhood Characteristics and Supportive Parenting Among Single Mothers*, *in* FAMILIES, CRIME, AND CRIMINAL JUSTICE 183, 184–85 (Greer Litton Fox & Michael L. Benson eds., 2000) (describing how the loss of relational networks contributes to an unwillingness of individuals to intervene in the behaviors of their neighbors).

122. *See* PHILLIPS, *supra* note 82, at 43, 45 (noting that crime is a key social indicator of U.S. economic decay); Russo & Linkon, *supra* note 109, at 210–11 (noting that Youngstown, Ohio experienced what was called a homicide epidemic and became known as the "murder capital" in the 1990s following the closing of steel plants); Sheehy, *supra* note 105, at 35, 39.

123. Miles-Doan, *supra* note 22, at 623 (describing the importance of community as a means of insulating or protecting people from crime).

124. Michael L. Benson et al., *Violence in Families: The Intersection of Race, Poverty, and Community Context*, *in* FAMILIES, CRIME, AND CRIMINAL JUSTICE, *supra* note 121, at 91; Judy A. Van Wyk et al., *Detangling Individual-, Partner-, and Community-Level Correlates of Partner Violence*, 49 CRIME & DELINQUENCY 412, 413–14 (2003) (describing how social isolation increases the risk of domestic violence). A recent National Institute of Justice study demonstrated the role that different neighborhood conditions (particularly those conditions that relate to poverty and economic stress) play in producing domestic violence. *See* MICHAEL L. BENSON & GREER LITTON FOX, WHEN VIOLENCE HITS HOME: HOW ECONOMICS AND NEIGHBORHOOD PLAY A ROLE (2004).

125. Bowen et al., *supra* note 121, at 184; Fagan & Browne, *supra* note 8, at 205, 260 (asking whether, given the conditions that create violence, it is possible to de-link marital violence from stranger violence); Miles-Doan, *supra* note 22, at 623 (observing the role of

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notes, functions as an "intervening process between social structures and domestic violence," has resulted in a loss of community controls on behavior generally, including established relationships between intimate partners.[126] The social isolation attending the collapse of occupational networks has been recognized as a risk factor for domestic violence.[127]

Recent studies suggest that these community characteristics have been linked to a rise in domestic violence.[128] Increased rates of domestic violence are associated with community decline even after controlling for factors such as prior violence and drug abuse.[129] Community characteristics have also been shown to correlate with more serious domestic violence injuries.[130] Moreover, neighborhood disadvantage has a direct effect on the rates of domestic violence even for couples not considered economically vulnerable.[131]

Although community poverty and social disorganization existed prior to current forms of economic globalization, the heightened contradiction between the promises and expectations of the social contract and the consequences of its breach distinguishes between current socio-economic developments and conditions in the past. As time-honored conventions about work and self-sufficiency clash with the material reality of deindustrialization, the subjective experience of injustice takes hold, resulting in anger, frustration, and self-destructive behavior.[132] The collapse of communities leads to a

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neighborhoods—"crucial setting[s]"—that contribute to rates of intimate partner violence); Van Wyk et al., *supra* note 124, at 415.

126. Fagan et al., *supra* note 21, at 35.

127. *See* Michael L. Benson et al., *Neighborhood Disadvantage, Individual Economic Distress, and Violence Against Women in Intimate Relationships*, 19 J. QUANTITATIVE CRIMINOLOGY 207, 210 (2003).

128. *Id.* at 228 (measuring an increase in calls to police "due to real differences in intimate violence behavior across neighborhoods and not just differences in reporting behavior").

129. *Id.* at 227.

130. Greer Litton Fox & Michael Benson, *Household and Neighborhood Contexts of Intimate Partner Violence*, 121 PUB. HEALTH REP. 419, 425–26 (2006).

131. Id.

132. *See* Fagan et al., *supra* note 21, at 104–05 (suggesting that expectations and relative deprivation are significant factors in producing violent behavior); Frank J. Garcia, *Trade Justice and Security* 4, (B.C. Law Sch. Fac. Papers No. 112, Dec. 9, 2005), *available at* http://lsr.nellco.org/cgi/viewcontent.cgi?article=1113&context=bc/bclsfp   ("Perceived discrepancies between the actual and the expected match between inputs and outcomes results in the subjective experience of inequity.").

delegitimization of behavioral norms and creates a "cynicism regarding the conventional social system and a weakened attachment to it."[133] Indeed, the collective experience of downward mobility accompanied by a sense of hopelessness has produced measurable levels of crime, generally, including domestic violence in families previously not considered at risk.[134]

4. Individuals without work

The consequences of diminished economic opportunity must also be examined at the individual and family level, namely the men and women who suffer psychological devastation and economic dislocation as a result of the loss of waged work.[135] The effects of massive job loss are not only registered in the lives of the unemployed, but also in the lives of those who remain employed and must endure the loss of confidence in their prospective ability to retain employment and maintain their standard of living.[136] A study commissioned by the U.S. Trade Deficit Review Commission indicated that the specter of plant closings, with its depressive effect on wages, has caused emotional turmoil for U.S. workers for whom daily life has become "new and unnerving."[137] The anxiety and ill

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133. Edward S. Shihadeh & Darrell J. Steffensmeier, *The Effects of Economic Inequality and Family Disruption on Urban Black Violence: Cities as Units of Stratification and Social Control*, 73 SOC. FORCES 729, 734 (1994) (describing the processes of delegitimization of social norms).

134. Benson et al., *supra* note 127, at 207 (describing how relative deprivation sets off emotions that give rise to domestic violence); Fox & Benson, *supra* note 130, at 425.

135. *See* Edmund Heery & John Salmon, *The Insecurity Thesis*, *in* THE INSECURE WORKFORCE 7, 16 (Edmund Heery & John Salmon eds., 2000) (noting that workers experience "traumatic and costly" consequences resulting from economic restructuring); Elizabeth R. Robertson et al., *The Costs and Benefits of Social Support in Families*, 53 J. MARRIAGE & FAM. 403, 406 (1991) (defining events that create the circumstances of unstable work).

136. Greer Litton Fox & Dudley Chancey, *Sources of Economic Distress: Individual and Family Outcomes*, 19 J. FAM. ISSUES 725, 727 (1998) (relating economic insecurity to a worker's confidence about keeping a current job and concern about future job prospects); Jacoby, *supra* note 85, at 1219–21, 1226 (describing the pervasive fear of job loss even when the job market stabilizes).

137. KATE BRONFENBRENNER, U.S. TRADE DEFICIT REVIEW COMM'N, UNEASY TERRAIN: THE IMPACT OF CAPITAL MOBILITY ON WORKERS, WAGES, AND UNION ORGANIZING 4–8 (2000), *available at* http://digitalcommons.ilr.cornell.edu/reports/3/ (reviewing studies that show that nine out of ten workers in the United States are worried about job security and are three times more worried than they were during the worst of the 1980–81 recession); Jacoby, *supra* note 85, at 1225.

health workers suffer as a byproduct of globalization and corporate restructuring are so ubiquitous that these consequences now serve as a "global indicator of economic distress."[138]

Studies of the impact of changing regional economies have emphasized the demoralization and stress experienced by workers. Workers interviewed during the course of these studies described the loss of work as triggering "depression," "stress," and a "mental nightmare."[139] They described their states of mind as "desperate," "insecure," "discouraged," "irritable," and "mad."[140] Workers who lost their jobs due to plant closings often employed metaphors of death and dying to describe their shock and devastation and compared the experience to the death of a spouse or a loved one.[141] Some workers characterized their grief in terms of a sense of abandonment, while others categorized such events as "the worst experience imaginable."[142]

The effects of economic instability and downward mobility on mental health has been described as "staggering," and include a rise in anxiety disorders, insomnia, headaches, and stomach ailments; an increase in the rates of alcoholism and drug abuse; and a substantial increase in mental hospital admissions.[143] Preexisting physical ailments were often exacerbated both by stress and the inability to

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138. Patricia Voydanoff, *Economic Distress and Family Relations: A Review of the Eighties*, 52 J. MARRIAGE & FAM. 1099, 1104 (1990); *see also* Cappelli, *supra* note 100, at 421 (arguing that "corporate restructuring has [been] the main driver of job insecurity"); Jane P. Nolan et al., *Job Insecurity, Psychological Well-being, and Family Life*, *in* THE INSECURE WORKFORCE, *supra* note 135, at 181.

139. Gaventa, *supra* note 82, at 49.

140. *Id.*

141. LEANA & FELDMAN, *supra* note 111, at 50, 51; PHILLIPS, *supra* note 82, at 107.

142. LEANA & FELDMAN, *supra* note 111, at 50; RAINES & DAY-LOWER, *supra* note 113, at 7–8.

143. *See* BROMAN ET AL., *supra* note 118, at 14 (chronicling the history of plant closings in Michigan); NATIONAL COMMISSION ON MENTAL HEALTH AND UNEMPLOYMENT OF THE NATIONAL MENTAL HEALTH ASSOCIATION, AMERICAN DREAM OR NIGHTMARE? UNEMPLOYMENT AND MENTAL HEALTH IN AMERICA 15, 23, 26 (1985) [hereinafter AMERICAN DREAM OR NIGHTMARE] (reporting on the correlation between economic changes and social stress as the cause of an increase in state mental hospitalizations with new and unexpected groups of patients with no prior mental hospitalization); NORTH CAROLINA VOICES, *supra* note 110, at 13 (recording a worker's description of the stress of starting over after a plant closing); Steve May & Laura Morrison, *Making Sense of Restructuring*, *in* BEYOND THE RUINS, *supra* note 109, at 259 (reviewing the correlation between economic changes and indicators of social stress).

continue with necessary medical treatment due to the loss of income and the absence of health insurance.[144]

Economic stress also affects unemployed workers' senses of self-esteem and dignity, usually in the form of a sense of worthlessness.[145] As workers helplessly confront the reality of plant closings, a state of powerlessness sets in. Self-blame and a loss of self-confidence are reinforced by the discriminatory hiring practices of prospective employers, who often view unemployed workers as unreliable.[146] Shame and embarrassment lead to further apprehension and anxiety about future job prospects.[147]

Displaced workers also experience a sense of alienation and disenfranchisement, and they often begin to withdraw from social and civic activities.[148] Hopelessness produces isolation as workers often reject assistance programs, which they view as hand-outs.[149] As opportunities to sustain workplace relationships decline, other kinds of isolation set in: friendships experience strain, personal loyalties wane, and the salutary effects of workforce affiliation diminish.[150] As a result, traditional values of loyalty and dedication erode.[151] Workers who remain employed complain that these conditions often serve to encourage exploitative and abusive management practices that, in

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144. *See* NORTH CAROLINA VOICES, *supra* note 110, at 11; Jacoby, *supra* note 85, at 1203 (noting temporary workers are one-sixth as likely to have employer-provided health insurance as standard full-time employees); Schultz, *supra* note 4, at 1924 (noting that even workers who find new jobs are less likely to retain health insurance).

145. BROMAN ET AL., *supra* note 118, at 16, 70; PHILLIPS, *supra* note 82, at 85–86.

146. BROMAN ET AL., *supra* note 118, at 174; LEANA & FELDMAN, *supra* note 111, at 59; Peter Turnbull & Victoria Wass, *Redundancy and the Paradox of Job Insecurity*, *in* THE INSECURE WORKFORCE, *supra* note 135, at 57, 69 (explaining that firms often do not hire laid-off workers who are stigmatized by their unemployed status).

147. *See* Jacoby, *supra* note 85, at 1220 (describing the resulting "pervasiveness of job aversion").

148. *See* PHILLIPS, *supra* note 82, at 86 (describing the alienation of laid-off workers and their distrust of the social fabric); RICHARD SENNETT, THE CORROSION OF CHARACTER 130 (1998) (describing the withdrawal of civic and business leaders from local government).

149. *See* PHILLIPS, *supra* note 82, at 86 (noting the lack of optimism about community services).

150. LEONARD FAGIN & MARTIN LITTLE, THE FORSAKEN FAMILIES 34 (1984) (referencing studies that validate Durkheim's theories related to the "protective value of belonging to a workforce"); LEANA & FELDMAN, *supra* note 111, at 7 (noting that plant closings result in a dropping off of friendships, often as a result of an inability to engage in social activities that require money).

151. *See* Heery & Salmon, *supra* note 135, at 6, 15 (discussing the decline of worker commitment and increased opportunistic behavior while bargaining); Jacoby, *supra* note 85, at 1227 (warning that job insecurity can lead to sabotage and workplace violence).

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turn, increase the level of employee anger and cynicism, which can eventually result in hostility, violent behavior, and rage.[152]

For many workers who face the bleak prospect of irreversible downward mobility and economic insecurity, life loses its meaning. Suicide and attempted suicide rates increase, as do incidents of crime and homicide rates.[153] The repercussion of these economic shifts has produced a values crisis that reverberates in households, with disturbing consequences for families.[154]

5. Individual and household characteristics and domestic violence

The accumulative consequences of economic transitions are most acutely experienced within households where the lives of workers and their families are shattered by economic disarray.[155] Traditional family structures wither under the pressure. Greer Litton Fox and Michael Benson have studied the effects of neighborhood instability on domestic violence and suggest that "the private behaviors of couples in their homes cannot be separated either from their local neighborhood settings or from the larger political economy and that as economic despair begins to displace economic confidence, an increase in the prevalence of [intimate partner violence] will not lag far behind."[156] Other scholars note that "[n]ot since the Depression

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152. *See* Bini Litwin, *A Conceptual Framework for a Multi-factor, Multi-level Analysis of the Origins of Workplace Violence*, 8 ILSA J. INT'L & COMP. L. 825, 841–42 (2002) (discussing the anger, hostility, and alienation that may occur when organizations seek to increase financial stability through mergers).

153. AMERICAN DREAM OR NIGHTMARE, *supra* note 143, at 11; NORTH CAROLINA VOICES, *supra* note 110, at 11 (reporting increased use of violence in communities with many laid-off workers); Robert C. Bird, *Employment as a Relational Contract*, 8 U. PA. J. LAB. & EMP. L. 149, 162 (2005) ("For every one percent increase in unemployment, homicides rise 5.7%, suicides increase 4.1%, deaths from heart disease, liver cirrhosis, and stress-related disorders increase by 1.9%, and 4.3% more men and 2.3% more women admit themselves to mental hospitals."); Kate Zernike, *Violent Crime Rising Sharply in Some Cities*, N.Y. TIMES, Feb. 12, 2006, at 11 (describing economic hopelessness as a factor in violent crimes).

154. Voydanoff, *supra* note 138, at 1101–06 (observing that recent significant global economic changes are sources of stress for individuals and families within the home).

155. *See* Katherine Meyer & Linda Lobao, *Farm Couples and Crisis Politics: The Importance of Household, Spouse, and Gender in Responding to Economic Decline*, 59 J. MARRIAGE & FAM. 204, 205 (1997) (discussing the nature of the household as the basic unit for understanding how economic events affect lives).

156. Fox & Benson, *supra* note 130, at 426.

has the impact of job loss on the nuclear family been such a focus of concern."[157]

A closer examination of households reveals the ways in which current economic shifts affect wage earners and foster household violence.[158] Economic uncertainty increases workplace pressure and the need to work longer hours, to endure the contingency of part-time and flexible jobs, and to experience the disappointment of unmet aspirations and diminished hopes of career development. Anger, humiliation, and despair experienced in the workplace are transferred to the home and are all factors that impair communication skills and influence rates of family dysfunction and domestic violence.[159] The cycle between poverty, stress, and intimate partner violence is difficult to break: poverty creates stress, households have diminished resources available to cope with stress, and stress is a source of violence.[160]

Individual perceptions of declining economic well being contribute to family distress, conflict, and violence.[161] Ethnographic

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157. LEANA & FELDMAN, *supra* note 111, at 187; Marleen O'Connor-Felman, *American Corporate Governance and Children: Investing in Our Future Human Capital During Turbulent Times*, 77 S. CAL. L. REV. 1255, 1294 (2004) (noting how the family structure is affected by downsizing, with a particular effect on divorce rates); *see* World Commission on the Social Dimension of Globalization, Frequently Asked Questions, http://www.ilo.org/public/english/wcsdg/faq.htm (2003) (advocating for a world commission to explore the social dimensions of globalization due to the impact on communities and families).

158. *See* Greer Litton Fox et al., *Economic Distress and Intimate Violence: Testing Family Stress and Resource Theories*, 64 J. MARRIAGE & FAM. 793, 803–04 (2002) (describing how a decrease in income and loss of employment are risk factors for increased domestic violence).

159. *See* Barbara Pocock & Jane Clarke, *Time, Money, and Job Spillover: How Parents' Jobs Affect Young People*, 47 J. INDUS. REL. 62, 71–72 (2005) (describing how economic uncertainty as well as difficult working conditions negatively affect the well being of families); Voydanoff, *supra* note 138, at 1099–105 (noting the correlation between economic distress and the well being of family relations); *see also* Jeff Madrick, *The U.S. in Peril?*, N.Y. REV. BOOKS, June 8, 2006, at 49 ("[P]overty and falling wages, national humiliation, high levels of unemployment, and lack of economic development contribute to a rise in dangerous extremism."); Evelin Gerda Lindner, *Humiliation in a Globalizing World: Does Humiliation Become the Most Disruptive Force?* 15 (June 2004) (unpublished manuscript), *available at* http://ssrn.com/abstract=668742 (describing humiliation as a force that may lead to an urge to retaliate by inflicting humiliation).

160. Rachel Jewkes, *Intimate Partner Violence: Causes and Prevention*, 359 LANCET 1423, 1424 (2002) ("Since poverty is inherently stressful, it has been argued that intimate partner violence may result from stress, and that poorer men have fewer resources to reduce stress.").

161. *See* LEVIN-WALDMAN, *supra* note 108, at 23 (noting that worker displacement increases rates of spouse and child abuse); RAINES & DAY-LOWER, *supra* note 113, at 47

studies of the consequences of plant closings have recorded workers' individual narratives, wherein they admit to worsening relationships with spouses and committing acts of violence as a result of the loss of work.[162] Indeed, Jacquelyn Campbell's recently completed study of domestic violence homicides found that the strongest contextual risk factor is the perpetrator's lack of employment.[163]

Certainly not all families succumb to violence. Some adapt to economic hardships and indeed often successfully adjust the gender stereotyping of household tasks related to child-rearing and housekeeping. But workers also report that, support offered by family structures notwithstanding, the weight of family responsibilities during economic crises creates additional strain, frustration, shame, and worry.[164] Moreover, current economic conditions may have rendered dual-earning families more vulnerable to economic distress as the earning power of women has compensated for the declining wages and loss of earning power of men.[165] Families dependent on dual-earners often experience heightened stress as both partners endure job uncertainty and downward mobility.[166] They have doubled the risk of job loss, and they each experience economic insecurity, both individually and as a couple. These circumstances serve to heighten the possibility of

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(noting evidence that job loss leads to domestic violence); Rand D. Conger et al., *Linking Economic Hardship to Marital Quality and Instability*, 52 J. MARRIAGE & FAM. 643, 643 (1990) (noting the experiences of the Great Depression when economic hardship was found to increase the risk of family dysfunction, including physical abuse); Gaventa, *supra* note 82, at 49–50 (describing negative effects on family life after plant closings); Van Wyk et al., *supra* note 124, at 424–29 (observing that subjective financial satisfaction is tied to domestic violence).

162. *See* PHILLIPS, *supra* note 82, at 107–08, (noting the strain on workers' marriages and families); Gaventa, *supra* note 82, at 49–50; Laurie Mercier, *Remembering and Redefining Deindustrialized Youngstown*, 55 AM. Q. 315, 320 (2003) (reviewing SHERRY LEE LINKON & JOHN RUSSO, STEELTOWN U.S.A.: WORK AND MEMORY IN YOUNGSTOWN) (noting that domestic violence rates rose in Youngstown after the demise of steel plants).

163. Jacquelyn Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multi-site Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003) (measuring a fourfold risk increase as a result of an abuser's unemployment).

164. *See* Gaventa, *supra* note 82, at 50 (noting, for example, the pain and shame experienced by grandparents who could not purchase items for their grandchildren because they had been laid off, as well as the tension within households when bills came due).

165. *See* Warren, *supra* note 84, at 9 (explaining that women's earnings compensate for men's stagnant earnings).

166. PHILLIPS, *supra* note 82, at 78 (noting additional disruption to families where both husband and wife work).

deteriorating   family   relationships   that   often   accompany joblessness.[167]

In light of these considerations, theories of domestic violence must expand to include the perspective of daily life of the men and women affected by global economic forces. As tensions and frustrations rise within households, the coping resources upon which individuals rely to mediate the effects of economic strain are revealing themselves to be inadequate to the task. The changing nature of the economy gives rise to precisely the conditions long identified with family crises and increased rates of domestic violence.

IV. INTERPRETING THE LINKAGES: THE RELATIONSHIP BETWEEN THE GENDERED DIMENSIONS OF WORK AND ECONOMICS AND DOMESTIC VIOLENCE

Empirical   studies   demonstrate   that   the   consequences   of economic   uncertainty   correlate   to   domestic   violence.[168]   An understanding of gender roles and identity associated with work and family further illuminates this relationship and provides insights into how economic strain contributes to domestic violence. Social problems such as domestic violence are often outcomes of both material structures and ideological influences by which people make sense of their lives.[169]

This Part explores the gendered dimensions of work and economics as a conceptual framework in which to consider domestic violence. It reviews how gender roles and the notion of the ideal worker assign to men primary responsibility in the workplace. It sets out the consequences of the gendered dimension of work, particularly the way in which gender prescriptive roles contribute to the different ways men and women react to unemployment and economic uncertainty. This Part also demonstrates that as a result of these assigned roles, workplace tensions increase and are reproduced within households, and contribute to increased rates of domestic violence.

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167.   Warren, *supra* note 84, at 21(noting the increased likelihood of catastrophe due to layoff in a dual-earning family).

168.   *See* BENSON & FOX, *supra* note 124; Jewkes, *supra* note 160; Voydanoff, *supra* note 138.

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

A. The Social Construction of Gender in
Wage-Labor and Self-Sufficiency

An examination of gender as a function of economic and market conditions provides insight into domestic violence as one response to downward economic mobility. Men and women are socialized to assume gender roles, and thereupon, to discharge those duties and responsibilities deemed appropriate to their sex.[170] Such prescriptive roles are transmitted through a vast array of cultural formulations and consecrated through social practice, and also communicated as conventional and legal wisdom, and accepted as self-evident truths.[171] In this regard, traditional norms regarding male and female roles in the realm of work tend to prevail.[172]

The assignment of gender roles has long functioned to signify men's place in wage labor and women's place in unpaid work.[173] Based on the nineteenth century notions of a "family wage," the ideal husband earned wages sufficient to maintain a safe and comfortable environment in the home for his wife and family.[174] This norm was reinforced by employer efforts to control labor and reduce employee turnover, such as the Ford Motor Company's historic Five

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170. V. SPIKE PETERSON & ANNE SISSON RUNYAN, GLOBAL GENDER ISSUES: DILEMMAS IN WORLD POLITICS 5 (2d ed. 1999) (defining gender as "socially learned behavior and expectations that distinguish between masculinity and femininity"). Gender identity is defined as "a subjective, but continuous and persistent, sense of ourselves as masculine or feminine." J. Bland, About Gender: Definitions (2005), http://www.gender.org.uk/about/00_defin.htm.

171. *See* Equal Employment Opportunity Comm'n v. Sears, Roebuck & Co., 628 F. Supp. 1264, 1352–53 (N.D. Ill. 1986), *aff'd*, 839 F.2d 302 (7th Cir. 1988) (defending against a Title VI claim and successfully arguing that women's lack of interest in commission sales was the reason for their absence in high-paying commission sales positions rather than Sears's discriminatory conduct).

172. Judy Fudge, *A New Gender Contract? Work/Life Balance and Working-Time Flexibility*, *in* LABOUR LAW, WORK, AND FAMILY 261, 286 (Joanne Conaghan & Kerry Rittich eds., 2005) (explaining how the notion of choosing the fulfillment of gender roles in regard to work is a socially embedded activity).

173. *See* JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 1 (2000) (noting that prior to 1780, market work and family work were vaguely differentiated).

174. Martha May, *The Historical Problem of the Family Wage: The Ford Motor Company and the Five Dollar Day*, *in* FAMILIES AND WORK 111, 112–13 (Naomi Gerstel & Harriet Engel Gross eds., 1987) (noting that the "family wage" developed as a result of efforts to improve the standard of living for working families); *see also* Kate Purcell, *Gendered Unemployment Security?*, *in* THE INSECURE WORKFORCE, *supra* note 135, at 113 (noting that the "family wage" was based on the assumption that men earned money outside the home and women were homemakers).

Dollar Day, which offered increased wages mostly to men who were married and supporting their families.[175]

For men, these developments acted to reinforce culturally determined responsibilities associated with manhood. They gave rise to long-standing normative assumptions that have shaped popular understanding associated with the maintenance of the family household, even when those assumptions failed to meet the needs of either men or women, or of men and women equally. Joan Williams has aptly described the inculcation of such beliefs: "Men are raised to believe they have the right and the responsibility to perform as ideal workers" with few responsibilities to home and family.[176]

Although the male identity has assumed different forms at different historical periods and within different cultural and social groupings, the male identity in the United States remains bound principally with paid work.[177] Indeed, the very understanding of masculinity is linked with a man's ability to provide for his family.[178] Fulfillment of this role continues to be transmitted as an imperative for men, idealized as the convention of manliness and particularly critical to male sense of self-worth.[179] Economic insecurity within the family is equated with a man's failure and is perceived as a threat to masculinity.[180]

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175. May, *supra* note 174, at 119–23. Single men of "proven thrifty habits," men under 22 years old, and single women who were sole support of their families were also eligible. *Id.* at 121.

176. Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 823 (1989). Williams also clarifies that not all men may choose to be ideal workers, but they are instilled with the belief that it is their choice. *Id.* at 823 n.102.

177. *See* COTTLE, *supra* note 99, at 25 ("There is almost no study in the social sciences in which work is not placed at the center of a man's life."); Michael Selmi & Molly S. McUsic, *Difference and Solidarity: Unions in a Postmodern Age*, *in* LABOUR LAW IN AN ERA OF GLOBALIZATION, TRANSFORMATIVE PRACTICES AND POSSIBILITIES, *supra* note 85, at 429, 431) (describing the "image of a universalized worker [as] one who was generally thought to be white, married, male, and blue-collar"); *see also* Nicky Le Feuvre, *Women, Work, and Employment in Europe*, *in* WOMEN IN THE EUROPEAN UNION, *available at* http://www.helsinki.fi/science/xantippa/wee/wee22.html (describing similar cultural developments in Europe).

178. *See* WILLIAMS, *supra* note 173, at 28; Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1757 (1998) ("[P]aid work has provided a main source of authority and identity for men.").

179. *See* Robertson et al., *supra* note 135, at 404 (discussing the negative effects of unemployment on men).

180. *See* COTTLE, *supra* note 99, at 253 (noting that it is work that provides "the structure and substance of a man's life, as well as his thinking" and causes him to "feel sane and whole"); WILLIAMS, *supra* note 173, at 29; Robertson et al., *supra* note 135, at 404

These constructs hold constant despite the fact that wage labor has been transformed by women workers who are employed full-time outside of the home.[181] The notion of the male "ideal worker" may seem less persuasive, if not obsolete, given the reality of dual earning families, but, as Joanne Conaghan and Kerry Rittich note, "work remains a deeply gendered activity."[182] The processes by which these norms are enforced operate simultaneously as external and internal pressures. Employers frequently demonstrate hostility toward men who want to take family leave.[183] Catherine Albiston's study of the Family Medical Leave Act demonstrated that men forfeit their family leave rights because they have accepted the belief that they should prioritize work over family.[184]

Women also face similar pressures. Women with children who perform as the ideal worker are often disparaged as bad mothers.[185] On the other hand, they may decline to use family leave rights and quit their jobs altogether because of their concerns that work outside of the home conflicts with the proper fulfillment of the role of a good mother.[186]

This is not to suggest that men and women necessarily achieve a sense of well being and fulfillment in the discharge of their

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("Moreover, a man's work instability identifies him as the prime cause of economic hardship.").

181. *See* Catherine R. Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 LAW & SOC'Y REV. 11, 31 (2005) (examining how family wage ideology is embedded in cultural norms and affects women's ability to exercise leave rights); Williams, *supra* note 176, at 806–07 (discussing the manner in which "women continued to be viewed as weaker than men physically and intellectually" during the Eighteenth Century).

182. Joanne Conaghan & Kerry Rittich, *Introduction: Interrogating the Work/Family Divide*, *in* LABOUR LAW, WORK, AND FAMILY, *supra* note 172, at 2.

183. *See* Martin H. Malin, *Fathers and Parental Leave Revisited*, 19 N. ILL. U. L. REV. 25, 39 (1998) (reporting that sixty-three percent of employers thought "it was unreasonable for a father to take even one day of leave following the birth of a baby" and noting that of the employers who offered parental leave to fathers, forty-one percent said "it was unreasonable for fathers to ever use it").

184. *See* Albiston, *supra* note 181, at 32–33 (reporting that male workers accepted that the ideal worker was compromised by taking family leave); *see also* Malin, *supra* note 183, at 41–42 (noting that even when men want to spend time with family, they are more likely to use vacation or personal days than to exercise family leave rights).

185. *See* WILLIAMS, *supra* note 173, at 70; Albiston, *supra* note 181, at 30–31 (relating an account of a woman who took family leave and was disparaged by her employer).

186. *See* Albiston, *supra* note 181, at 34–35 (demonstrating that some women quit their jobs after inner conflicts of desiring to be a good mother and to continue working).

prescribed gender roles. Nor does it suggest that such norms are static.[187] Cultural norms related to gender have varied effects on individuals. The entry of increasing numbers of women into the wage-labor force has certainly gained normative endorsement. But it is also true that these gains have been subject to countervailing pressure by long-held attitudes about the proper place of men and women in society. While the distribution of responsibility for household work and childcare has expanded, women remain disproportionately responsible for "house work."[188] The number of women entering the full-time workforce in recent years has declined, a trend attributed both to the weakening job market and the burdens that women bear as homemakers.[189] Although women experience anxiety related to their own job security, studies demonstrate that they tend to suffer more distress and exhibit greater concern over their spouse's job security.[190] The new economy has in fact created new gender concerns.[191]

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187. Descriptions abound of the downside of "the lethal aspects of the male role," chronicling the pathos of men who miss important milestones of their children's lives and whose health is affected by relentless pressure at work. *See* WILLIAMS, *supra* note 173, at 28 (citing ARLIE R. HOCHSCHILD, THE TIME BIND: WHEN WORK BECOMES HOME & HOME BECOMES WORK 59 (1997)). Conversely, as most women enter into the realm of paid work, they often find significant opportunities for self-fulfillment, development, and equality. *See* Schultz, *supra* note 4, at 1883–85.

188. Cynthia L. Estlund, *Work and Family: How Women's Progress at Work (and Employment Discrimination Law) May Be Transforming the Family*, 21 COMP. LAB. L. & POL'Y J. 467, 479–80 (2000); *see also* Fernández-Kelly, *supra* note 85, at 167 (discussing men's failure to take on their share of domestic chores).

189. Eduardo Porto, *Stretched to the Limit, Women Still March to Work*, N.Y. TIMES, Mar. 2, 2006, at A1.

190. *See* Fox & Chancey, *supra* note 136, at 735 (discussing women's feelings about financial and unemployment difficulties); Voydanoff, *supra* note 138, at 1105 (reporting on a study that a husband's unemployment causes a wife's depression and anxiety more than her own unemployment). This does not suggest that responses to prescribed roles are uniform and unchanging. Many men support women's entry and achievements in the workforce. *See* David Halle, *Marriage and Family Life of Blue-Collar Men*, *in* FAMILIES AND WORK, *supra* note 174, at 317 (noting a study of male factory workers whose wives worked in white collar, professional, and management positions). *But see* WILLIAMS, *supra* note 173, at 2 (noting that a recent survey found that two-thirds of Americans held the belief that it is in women's best interest to stay home to care for family and home).

191. Kerry Rittich, *Equity or Efficiency: International Institutions and the Work/Family Nexus*, *in* LABOUR LAW, WORK, AND FAMILY, *supra* note 172, at 44 (noting how factors such as the feminization of the labor market and the decline of the family wage have become prominent policy and regulatory issues).

B. Socially Constructed Reactions to Economic Uncertainty

Not surprisingly, intrafamily problems, including domestic violence, are related to the efficacy with which gender roles can be fulfilled. As Rayna Rapp has noted, "[i]t is through families that people enter into productive, reproductive and consumption relations."[192] But, as she notes, "[t]he two genders enter them differently."[193] Gender prescriptive roles serve to inform the expectations with which men and women learn to associate meaning with their socioe-conomic status. Gender identity not only functions as an important determinant of the responsibilities men and women discharge in the economy, but it also affects the psychosocial consequences related to how well they perform their obligations.

Gender is also a significant factor in differentiating between men's and women's psychological reactions to unemployment.[194] When norms associated with gender-appropriate work categories are transgressed, there are repercussions for the transgressor as well as those with whom he interacts.[195] The failure by a man to fulfill his role as breadwinner, the predominant means by which men obtain self-esteem and self-worth within the household, implies a failure to fulfill family roles.[196] Tensions often develop as men struggle to maintain their assigned place in and outside of the home.[197] Patriarchal hierarchies that may no longer be transacted through

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192. Rayna Rapp, *Family and Class in Contemporary America: Notes Towards an Understanding of Ideology*, *in* FAMILY, HOUSEHOLD, AND GENDER RELATIONS IN LATIN AMERICA 197, 199 (Elizabeth Jelin ed., 1991).

193. Id.

194. Lea E. Waters & Kathleen A. Moore, *Predicting Self-Esteem During Unemployment: The Effect of Gender, Financial Deprivation, Alternate Roles, and Social Support*, 39 J. EMP. COUNSELING 171, 171 (2002) (noting that "alternate roles" is a factor in the impact of unemployment on psychology).

195. *See* George A. Akerlof & Rachel E. Kranton, *Economics and Identity*, 115 Q. J. ECON. 715, 716–17 (2000) ("Violating [gender-based behavioral] prescriptions evokes anxiety and discomfort in oneself and in others.").

196. Joan Williams, *Implementing Antiessentialism: How Gender Wars Turn Into Race and Class Conflict*, 15 HARV. BLACKLETTER L.J. 41, 57 (1999) (noting that this is a "society where manhood is linked with breadwinning").

197. *See* Marion Crain, *"Where Have All The Cowboys Gone?" Marriage and Breadwinning in Postindustrial Society*, 60 OHIO ST. L.J. 1877, 1905–08 (1999) (noting the theories that explain household tensions and high divorce rates as a consequence of the demise of the breadwinner/homemaker model); Tom Mortenson, *Fact Sheet: What's Wrong with the Guys?* 3 (2003), http://www.postsecondary.org/archives/previous/GuysFacts.pdf (noting that traditional male employment has steadily disappeared).

performance of socially constructed roles in the economic realm may be exercised in self-destructive behaviors and abusive conduct in the home.[198]

Job insecurity often translates into increased psychological aggression.[199] Some men resort to physical violence as an alternative, socially inscribed facet of manhood.[200] Angela Harris has explained that men precluded from fulfilling the dominant model of masculinity as a result of their subordinated role in the workplace often resort to "'hypermasculinity' (the exaggerated exhibition of physical strength and personal aggression) in an attempt to gain social status."[201] Violence becomes an equalizing force as traditional gender roles are unfulfilled and the prescribed order of household obligations is destabilized.[202] Indeed, researchers who have measured the effects of economic instability on household relationships note that "[domestic] violence substitutes for socioeconomic leverage as a means for men to establish their authority."[203] In contrast, women, as a general principle, "are not acculturated to physical violence in

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198. Yllö, *supra* note 23, at 609–10 (observing that family dynamics and gendered dynamics with regard to work are "socially constructed and they create and maintain male power within the family and society").

199. Nolan et al., *supra* note 138, at 196–97 (referencing a Canadian study demonstrating the concept of spillover of work into family life and family conflict); *see also* Broman et al., *supra* note 118, at 96 (noting that men who experience economic strain are more likely to suffer mental health disorders and stress often manifested as increased aggression).

200. Miles-Doan, *supra* note 22, at 627–28; *see also* Barbara H. Chasin, Inequality & Violence in the United States 252 (2004) (noting that male violence is often the product of a socialization process that suggests that physical force is an acceptable means to resolve problems); Jewkes, *supra* note 160, at 1423 (noting that violence is often used to resolve a crisis of male identity). The scholarship of several disciplines has established that violence provides a means to act out masculine identity per socially constructed norms. *See* Carolyn Strange, *Masculinities, Intimate Femicide, and the Death Penalty in Australia 1890–1920*, 43 Brit. J. Criminology 310, 333 (2003); *see also* Suzanne Sangree, *Title IX and the Contact Sports Exemption: Gender Stereotypes in a Civil Rights Statute*, 32 Conn. L. Rev. 381, 402–03 (2000) (observing the relationship between war, sports, and male violence); Jackson Katz & Sut Jhully, *Manhood on the Mat*, Boston Globe, Feb. 13, 2000, at E1 (commenting on the popularity of the program "'WWF Smackdown!' where size, strength, and brutality are rewarded").

201. Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 Stan. L. Rev. 777, 785 (2000).

202. *See* Laura Ann McCloskey, *Socioeconomic and Coercive Power Within the Family*, 10 Gender & Soc'y 449, 451 (1996); *see also* Fox et al., *supra* note 158, at 803–04.

203. Benson et al., *supra* note 127, at 212 (citations omitted).

the same way [as] men."[204] Not all women react the same to economic decline, of course, but studies suggest that they are more likely to seek support from friends and relatives, a strategy that may further exacerbate a man's self-esteem and call further attention to his failure in fulfilling his role as breadwinner.[205]

Given the relationship between masculinity and violence, as well as the centrality of paid labor to male identity, the impact of economic uncertainty produces a demonstrably greater reaction among men than among women that often includes anti-social behavior.[206] When gender norms cannot be fulfilled, men are likely to experience the stress, anxiety, and heightened states of anger and frustration that contribute to those conditions that often produce domestic violence.[207] In an ironic use of terminology, some have described men's lack of control in their responses to the loss of identity that arises out of events such as a plant closing as a socially constructed type of "learned helplessness," the very concept used to describe battered women's inability to exit from abusive relationships.[208]

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204. C. Quince Hopkins, *Rescripting Relationships: Towards a Nuanced Theory of Intimate Violence as Sex Discrimination*, 9 VA. J. SOC. POL'Y & L. 411, 460 (2001).

205. COTTLE, *supra* note 99, at 266–67 (observing that women may be "better able to sustain the discontinuities caused by unemployment inasmuch as their egos have developed primarily through human encounters, human mutualities"); *see also* Waters & Moore, *supra* note 194, at 174 (noting that women make use of social support as a way of coping with financial deprivation).

206. *See* McCloskey, *supra* note 202, at 450 (observing that men are more likely than women to exhibit hostility in the marriage as a result of economic strain because of the assigned role of wage-earner); *see also* BROMAN ET AL., *supra* note 118, at 87 (noting that because of the roles men are required to play, the impact of unemployment is greatest for married men).

207. *See* COTTLE, *supra* note 99, at 21–22. Although there has been significant attention paid to domestic violence occurring at the workplace, there has been little notice of the ways in which conditions at work produce such violence or how it spills into the private spaces of the home. For an overview of domestic violence in the workplace, see Employment and Housing Rights for Survivors of Abuse, http://www.legalmomentum.org/legalmomentum/programs/ehrsa/ (last visited Nov. 29, 2006).

208. BROMAN ET AL., *supra* note 118, at 176; *see also* WALKER, *supra* note 32. Walker's seminal work on this issue posits that victims who experience repeated domestic violence suffer a condition known as learned helplessness, are rendered passive, and therefore make no attempts to leave an abusive relationship. *Id.*

C.   *Power Differentials in the Workplace and in the Home*

Domestic violence is not only a product of the absence of work. It is also a consequence of the uncertainty at work during periods of economic dislocation. Unstable work conditions act to erode the benefits of employment. Those who remain employed experience high levels of stress and anxiety and endure the heightened tension of unequal power relations between employers and employees.[209] Worker acquiescence to pay cuts, flexibilization, and the loss of benefits are often achieved by operation of modalities of power that enact patriarchal hierarchies.[210] Employers require heightened productivity from male workers who must successfully compete with other men—and even more so with women—in order to maintain their male identities at work.[211] Stress related to workplace tensions and shifting cultural norms is likely to find outlet in households where established patriarchal norms afford men greater power and authority over women.[212]

As a result, workplace tensions have increasingly given way to physical violence on the job and eventually in the home.[213] Violence at work has been described as a staggering problem: each year there are approximately one thousand murders of co-workers and at least two million reported aggravated assaults at the workplace.[214] The

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209. *See supra* note 159 and accompanying text. For a description of death and suicide epidemics as a result of stressful working conditions, see Makoto Ishida, *Death and Suicide from Overwork: The Japanese Workplace and Labour Law*, *in* LABOUR LAW IN AN ERA OF GLOBALIZATION, TRANSFORMATIVE PRACTICES, AND POSSIBILITIES, *supra* note 85, at 219.

210. *See* Katherine V.W. Stone, *Flexibilization, Globalization, and Privatization: The Three Challenges to Labor Rights in Our Time* 1–2 (Globalization and Labor Standards, Working Paper No. 1-05, 2005), *available at* http://www.laborstandards.org/ Wpapers/Stone_01-05.pdf ("Flexibilization refers to the changing work practices by which firms no longer use internal labor markets or implicitly promise employees lifetime job security, but rather seek flexible employment relations that permit them to increase or diminish their workforce, and reassign and redeploy employees with ease."); *see also* Litwin, *supra* note 152, at 827.

211. *See* Michael Selmi, *Sex Discrimination in the Nineties, Seventies Style: Case Studies in the Preservation of Male Workplace Norms*, 9 EMP. RTS. & EMP. POL'Y J. 1, 42 (2005) (describing how discriminatory practices encourage men to produce more than women at work); *see also* Klare, *supra* note 85, at 18 (noting the public health dangers of overwork).

212. *Introduction* to *Employment and Family Life*, *in* FAMILIES AND WORK, *supra* note 174, at 262 (describing "negative spillovers" from work to home).

213. *See* Litwin, *supra* note 152, at 827.

214. *Id.* at 829 (quoting William Atkinson, *The Everyday Face of Workplace Violence*, RISK MGMT., Feb. 2000, at 12).

International Labor Organization reports that workplace violence is considered to be "not just an episodic, individual problem, but a structural, strategic issue rooted in wider social, economic, organizational and cultural factors" and one that moves on a continuum affecting households as well.[215]

This workplace violence is disproportionately suffered by women.[216] International Labor Organization statistics demonstrate that homicide in the United States has become the second leading cause of occupational death overall, and the leading cause of occupational death for women.[217] The gender dimension to workplace violence adds yet another consequence for domestic violence as these experiences are reproduced in households, as norms established in one venue carry over to the other.

Employment practices that discriminate against women also contribute to domestic violence in the home.[218] These behaviors, which enact the hierarchies within the realm of the labor market and are increasingly visited on women workers during periods of economic decline, are often the result of efforts to perpetrate male norms and render women powerless as a way to demonstrate that they are not welcomed in the workplace.[219] Short of violence, these practices are often enacted through overt hostility and contribute to perceptions of women's powerlessness in the home.[220] Michael Selmi

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215. International Labor Organization, Safework: Introduction to Violence at Work, http://www.ilo.org/public/english/protection/safework/violence/intro.htm (last visited Nov. 18, 2006) [hereinafter Safework: Introduction to Violence at Work]; see also International Labor Organization, Safework: The Cost of Violence and Bullying at Work, http://www.ilo.org/public/english/protection/safework/violence/costof.htm (last visited Nov. 18, 2006).

216. See Safework: Introduction to Violence at Work, supra note 215; see also Litwin, supra note 152, at 836 (citing Alisa Tang, The Workplace Can Be Threatening, Especially for Women, N.Y. TIMES, Dec. 15, 1999)); id. at 826, 845, 849, 852, app. A1 (noting that workplace conditions give rise to violence and certain workplace behaviors, including violent and aggressive behaviors, manifest themselves in gender conflict).

217. Safework: Introduction to Violence at Work, supra note 215.

218. See generally Selmi, supra note 211, at 38–39 (noting that, in addition to employment practices being discriminatory, there is a "societal view that it would be best for women to remain home with their children").

219. See John J. Donohue III & Peter Siegelman, Law and Macroeconomics: Employment Discrimination Litigation over the Business Cycle, 66 S. CAL. L. REV. 709, 725 (1993); see also Selmi, supra note 211, at 35–37 (reviewing how employment discrimination and sexual harassment cases demonstrate that women were unwelcome in the workplace).

220. See CHRISTINE L. WILLIAMS, GENDER DIFFERENCES AT WORK: WOMEN AND MEN IN NONTRADITIONAL OCCUPATIONS 133 (1989).

has noted that "workplace norms help maintain stereotypes and gender roles in the home as well."[221] Indeed, states of inequality produced through gender animus at work are often associated with the production of violence against women in the home.[222]

The social construction of gender roles and the consequences associated with the transgression of these roles are produced in the workplace and reproduced in the household. Women are vulnerable to domestic violence, in part, because they are vulnerable to the economic uncertainties of their male partners, and also because of conditions experienced by both men and women in the workplace. The sum total of these consequences of downward economic transitions indicates that "more than individual characteristics and couple interactions are involved in the genesis of domestic violence."[223]

V. SHIFTING THE DISCOURSE: NEW MODES OF INTERVENTION AND NEW ALLIES

A paradigm shift from the criminal justice system—which relocates domestic violence from a single site of human interaction—to the multiple realms of political economy would offer a number of promising analytical possibilities.[224] First, this shift would recast the obstacles that prevent women from leaving abusive relationships as difficulties that transcend issues of individual victim agency and the exercise of power by individual perpetrators. This approach offers the possibility of a better understanding of the interaction between gender violence and social class, a relationship that remains undertheorized. Second, the use of a different analytical framework also suggests a change in tactics and strategies by which to respond to domestic violence. Finally, a revised framework in which domestic violence prevention is linked to critical globalization activism improves the conditions for collaboration between the two movements. Establishing these links sets in relief the structural

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221. Selmi, *supra* note 211, at 36.

222. Jewkes, *supra* note 160, at 1424 (noting that violence may be a product of inequality regardless of who is advantaged by unequal power).

223. Fox et al., *supra* note 158, at 806.

224. *See* GITA SEN, NEOLIBS, NEOCONS, AND GENDER JUSTICE: LESSONS FROM GLOBAL NEGOTIATIONS 3 (2005), *available at* http://www.unrisd.org/publications/opgp9 (critiquing a way of considering the gendered relations of power as too narrow).

nature of domestic violence and reveals the gendered social costs of market forces.

A. Transcending the Individual Framework

Domestic violence scholars have long pondered the factors that prevent battered women from leaving violent relationships. Researchers contend that many victims remain in abusive relations as a matter of need, principally a financial dependency on their abusers.[225] They have established that the difficulty a victim faces in achieving economic self-sufficiency is often related to the abuser's exercise of power to deny her freedom of movement or to physically impair her work-related capabilities.[226] These observations usually focus on a woman's financial constraints in the context of her individual situation and in regard to her immediate circumstances.

However, more than gender-based power keeps a woman economically dependent. Women are also constrained by limited economic opportunities. Studies tracking the unemployment effect of plant closings note that women are disproportionately affected.[227] Women laid off from their jobs are "twice as likely as men to remain unemployed for longer than a year."[228] The U.S. unemployment rate for women has grown at a faster rate than for men.[229] Because many women are also contingent workers, they are often ineligible for unemployment benefits.[230]

As unemployment becomes a chronic condition and safety net programs are eviscerated, households have become the site where survival strategies and coping mechanisms are developed with other

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225. *See* Holly Bell, *Cycles Within Cycles*, 9 VIOLENCE AGAINST WOMEN 1245, 1250 (2003) (demonstrating how women cycle in and out of abusive relationships because of economic dependency on the abuser).

226. *See Violence Against Women: Victims of the System: Hearing Before the S. Comm. on the Judiciary*, 102d Cong. 242 (1991) (showing that one-third of battered women reported that their abusers prevented them from working).

227. *See* PHILLIPS, *supra* note 82, at 80; *see also* LOUISE AUERHAHN & SARAH ZIMMERMAN, UNDERSTANDING THE RECESSION'S EFFECT ON WOMEN: TOOLS FOR EMPOWERMENT 1 (2004), *available at* http://www.wpusa.org/publications/complete/wpusa_cardea.pdf (exploring the economic experiences of women during the 2001 recession).

228. PHILLIPS, *supra* note 82, at 80.

229. AUERHAHN & ZIMMERMAN, *supra* note 227, at 17 note e.

230. *See* UAW, Unemployment Insurance, Employment Training and Safety Net Programs, http://www.uaw.org/cap/06/issues/issue16.cfm (last visited Nov. 16, 2006); *see also* AUERHAHN & ZIMMERMAN, *supra* note 227, at 17 (noting that unemployment systems favor full-time employees and thus men over women).

household members.[231] The importance of household economies may discourage women from reporting domestic violence to public authorities for fear that such disclosure might affect future job prospects for themselves or for their abusive partners.[232] They may also be reluctant to initiate court processes, which may be expensive, may be time consuming, and may exacerbate economic stress. Unfortunately, battered women who do not exit violent relationships are often characterized as individuals who fail to take responsibility for their plight.[233] The conflation of battered women as powerless victims unable to leave, and as individuals unable to achieve economic self-sufficiency, results in their representation as persons inherently unworthy of assistance.[234]

To think about domestic violence as a phenomenon related to market forces is to examine the structural context of the household. This acknowledges the political aspects of battered women's coping abilities that can be viewed as both "individualised and involv[ing] everyday resistances" and survival strategies in the context of the larger social and economic issues, as well as within the context of their relationships.[235] Such a shift in the discourse restores agency to women and allows "women—even injured ones—[to be seen] as powerful actors."[236] This shatters the stereotypical image of a

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231. *See* Elizabeth Warren, *Rewriting the Rules: Families, Money, and Risk* (Oct. 21, 2005), http://privatizationofrisk.ssrc.org/Warren/ (noting that both mothers and fathers have to work in order to survive).

232. *See* RICHARD FREEMAN, URBAN INSTITUTE REENTRY ROUNTABLE, CAN WE CLOSE THE REVOLVING DOOR?: RECIDIVISM VS. EMPLOYMENT OF EX-OFFENDERS IN THE U.S. 10 (2003), http://www.urban.org/UploadedPDF/410857_freeman.pdf (noting that in a study of four major U.S. cities, only 12.5 percent of employers said they would definitely accept an application from someone with a criminal record); *see also* Daniel G. Saunders et al., *TANF Workers' Responses to Battered Women and the Impact of Brief Worker Training*, 11 VIOLENCE AGAINST WOMEN 227 (2005) (noting that women workers did not want to disclose abuse to TANF workers about benefits because of fear of negative outcomes).

233. Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1285 (1992) (explaining that courts believe that women can leave an abusive relationship and thus, leaving becomes the normal response).

234. *See* Deborah M. Weissman, *Law as Largesse: Shifting Paradigms of Law for the Poor*, 44 WM. & MARY L. REV. 737, 789–90 (2002).

235. Marianne H. Marchand, *Challenging Globalisation: Toward a Feminist Understanding of Resistance*, 29 REV. INT'L STUD. 145, 154 (2003) (describing individual forms of resistance as acts that involve daily survival strategies during economic downturns).

236. Janet Halley, *The Politics of Injury: A Review of Robin West's* Caring for Justice, 1 UNBOUND: HARV. J. LEGAL LEFT 65, 83 (2005), *available at* http://www.law.harvard.edu/students/orgs/unbound/archive/2005_spring/articles/1UNB065-Halley.pdf. *See generally* Edward W. Gondolf & Ellen R. Fisher, BATTERED WOMEN AS SURVIVORS: AN

battered woman as a helpless victim entrapped in a personal relationship gone bad.

An examination of the links between market conditions and domestic violence also requires a more textured consideration of the relationship between poverty and domestic violence. This relationship has been undertheorized due to fear that domestic violence would receive less attention as just one more problem emanating from a culture of poverty.[237] To focus on economic forces, however, is not to disparage the men and women who live with economic uncertainty. Rather, it serves to illustrate the ways in which current global economic restructuring often contributes to despair and violence. This paradigm shift emphasizes the importance of structural forces in the lives of families who experience domestic violence.

B. Enhancing and Expanding Domestic Violence Intervention Strategies

Although some domestic violence programs provide job counseling for victims, most services focus on emergency shelter, transitional housing, trauma counseling, and safety planning.[238] As Shamita Das Dasgupta has observed, domestic violence agencies have "take[n] on characteristics of apolitical service delivery centers" rather than struggling for sustainable social change.[239] A paradigm shift that connects domestic violence to global economics sets in relief the need for strategies that extend beyond the customary offerings of domestic violence programs.

ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1998) (reframing the paradigm from domestic violence victim to active survivor).

237. *See* Adele M. Morrison, *Changing the Domestic Violence (Dis)course: Moving from White Victim to Multi-cultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1077–78 (2006) (noting the rhetoric that identifies victims of domestic violence as coming from all social classes).

238. For a description of a model program that provides intensive structural economic intervention services to battered women, see Neil Websdale & Byron Johnson, *Reducing Woman Battering*, *The Role of Structural Approaches*, *in* DOMESTIC VIOLENCE AT THE MARGINS 389 (Natalie J. Sokoloff & Christina Pratt eds., 2005).

239. Shamita Das Dasgupta, *On* Violence Against Women's *10th Anniversary*, 10 VIOLENCE AGAINST WOMEN 1401, 1404 (2004); *see also* Andrea Smith, *Looking to the Future, Domestic Violence, Women of Color, the State, and Social Change*, *in* DOMESTIC VIOLENCE AT THE MARGINS, *supra* note 238, at 416.

1. Public/private dichotomy redux—domestic violence and regulating plant closings

Few demands have been made for greater government intervention and public accountability in plant closing decisions. These matters are customarily considered to be wholly within the province of the private sector and beyond the reach of government, a construct with which domestic violence specialists are familiar.[240] Domestic violence scholars have sought to demonstrate the public nature of private acts and the accompanying need for public intervention in these realms traditionally considered "private." Indeed, the battered women's movement has long demanded state intervention in family violence, a matter once considered a private issue.[241] Given the relationship between chronic unemployment and battering, it is not unreasonable to call upon domestic violence advocates to challenge the public/private dichotomy in the realm of the market as they have challenged violence in the realm of the family.

The strategy would pose a formidable challenge, and one which would require the transformation of established views about private property. No legal challenge has yet prevented the closing of a factory.[242] As Martha Mahoney has warned, the failure to develop a successful legal strategy to regulate plant closings further discourages consideration of these issues.[243] Furthermore, the weak legal protection available through the Worker Adjustment and Retraining Notification (WARN) Act to plant workers who face job losses due to plant closings are an indication of the lack of workers' rights to job security.[244] Indeed, WARN's anemic regulatory scheme is itself a

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240. LEVIN-WALDMAN, *supra* note 108, at 3, 8 (noting that there has been little research discussing the role of public policy in preventing plant closings).

241. *See* Siegel, *supra* note 10, at 2118 ("Men who assaulted their wives were often granted formal and informal immunities from prosecution, in order to protect the privacy of the family and to promote 'domestic harmony.'").

242. *See* Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264, 1280 (6th Cir. 1980). The court, quoting the District Court in its ruling below, stated that "[u]nfortunately, the mechanism to reach this ideal settlement, to recognize this new property right, is not now in existence in the code of laws of our nation." *Id.* at 1266.

243. *See* Martha R. Mahoney, *Class and Status in American Law: Race, Interest, and the Anti-transformation Cases*, 76 S. CAL. L. REV. 799, 844 (2003).

244. 29 U.S.C. §§ 2101–2109 (2006). The Act requires only that companies that employ more than one hundred employees provide sixty days notice prior to the closing. *Id.* Following the WARN Act, several states adopted their own "'mini-WARN' statutes." *See*

manifestation of the dichotomy between public and private spheres and the dominance of the ideology of limited government interference into the latter.[245]

The domestic violence movement may be mismatched against market forces. However, undertaking such an initiative would nonetheless frame the issue that progressive groups might aspire to address. Framed as a legal issue, the convincing arguments for regulating plant closings may be in short supply, but are not without a starting point. Although it is beyond the scope of this Article to review the possible strategies by which to challenge plant closings, existing legal arguments in favor of state regulation of markets have relevance. Legal scholars, legislatures, and courts have recently grappled with municipalization, whereby a government unit takes ownership of a public service previously provided by a private entity for purposes of the public good.[246] In *Kelo v. City of New London*, the U.S. Supreme Court ratified the right of a municipality to use eminent domain to revitalize economically depressed communities, affirming that the city's need for job creation and enhanced tax revenues justified the taking of private property as "public purpose."[247] In the city of Hercules, California, the city council used its power of eminent domain to thwart Wal-Mart's plans to build a big-box store on land near the city's waterfront.[248] In the context of bankruptcy with repercussions for filings that result in plant closings, Karen Gross has suggested that the Bankruptcy Code should be revised to weigh community interests and eliminate the misperception of "the debtor-creditor relationship as a private transaction between two parties designed to maximize wealth."[249]

Christopher P. Reynolds et al., *Managing Reductions in Force for the Faltering Company*, 696 PLI/LIT 403, 467 n.1 (2003).

245.   *See* Christopher David Ruiz Cameron, *All Over but the Shouting? Some Thoughts on Amending the Wagner Act by Adjudication Rather than Retirement*, 26 BERKELEY J. EMP. & LAB. L. 275, 288–89 (2005) (observing that many oppose regulations such as WARN on the basis that businesses are already over-regulated).

246.   *See* Shelley Ross Saxer, *Eminent Domain, Municipalization, and the Dormant Commerce Clause*, 38 U.C. DAVIS L. REV. 1505, 1506 (2005).

247.   545 U.S. 469, 469 (2005). Although *Kelo* can be interpreted as a decision that ultimately enhanced private business interests, the Court's language suggests a sensitivity to community needs due to economic decline and the loss of industry. *Id.* at 478–80.

248.   Patrick Hoge, *Vote Goes Against Wal-Mart*, S.F. CHRON., May 24, 2006, at B1.

249.   Joseph A. Guzinski, *Failure and Forgiveness: Rebalancing the Bankruptcy System*, 15 BANKR. DEV. J. 401, 404 (1999) (reviewing KAREN GROSS, FAILURE AND FORGIVENESS (1997)).

These theories can be further developed by those with an incentive to ameliorate the harmful public consequences of private market relationships.

The arguments invoked earlier to demand public intervention against domestic violence bring a historically relevant critique of laissez-faire policies in the market and in their demands for public accountability and regulation of private determinations in plant closings.[250] As Frances Olsen noted over two decades ago, "[t]he classic laissez-faire arguments against state regulation of the free market find a striking parallel in the arguments against state interference with the private family."[251] She observed that "[t]he two sets of arguments, and the ideals that underlie them, share a great deal more than just hostility to government. Both are constructed of similar elements and subject to similar attacks; our understanding of each is enriched by our understanding of the other."[252] Domestic violence analysts are well situated to work within this parallel construction and to identify the structural economic determinants of domestic violence as private matters with public repercussions to justify regulation of plant closings for the protection of women and families.

2. *Improving Trade Adjustment Assistance programs*

Domestic violence advocates possess the analytical framework to identify ways to improve Trade Adjustment Assistance (TAA)[253] and Workforce Investment (WIA)[254] programs designed to assist

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250. Both sets of claims require consideration of intersecting and diverging needs. *Compare* LEVIN-WALDMAN, *supra* note 108, at 145–47 (questioning whether plant closing decisions can remain in the private realm given their public consequences), *with* Martha Albertson Fineman, *What Place for Family Privacy?*, 67 GEO. WASH. L. REV. 1207, 1216 (1999) (acknowledging the complexity of the issue of family privacy).

251. Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1502 (1983).

252. Id.

253. These programs were established under the Trade Act of 1974 to provide assistance to workers who lose their jobs or whose hours or wages are reduced as a result of increased imports. Trade Adjustment Assistance Reform Act of 2002, Pub. L. No. 107-210, §§ 101–151, 116 Stat. 933, 935–54 (2002) (codified in scattered sections of 19 U.S.C.); *see also* U.S. Department of Labor, Training, Trade Act Programs, http://www.dol.gov/dol/topic/training/tradeact.htm (last visited Nov. 19, 2006).

254. Workforce Investment Act of 1998, 29 U.S.C.A. §§ 2801–2920 (2002) (services to adult and dislocated workers). In addition, the Economic Dislocation and Worker Adjustment Assistance programs authorized by the Job Training Partnership Act also provide re-

dislocated workers. TAA and WIA programs are often housed in the same government centers with welfare offices whose caseworkers are charged with implementing the Family Violence Option (FVO) to assist domestic violence victims who rely on welfare benefits to achieve economic independence.[255] Many of the obstacles to implementing the FVO are similar to those that exist in TAA and WIA programs.[256] These programs suffer from similar bureaucratic cultures and untrained and underpaid program staff.[257] TAA, WIA, and FVO programs are subject to, and limited by, the pressures of program performance and outcome measures.[258] These constraints deny comprehensive assistance to hard-to-place clients deemed unlikely to succeed, and instead emphasize short-term services rather than meeting the challenges of both battered women and dislocated workers.[259]

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employment services. *See* Job Training and Paternship Act, Pub. L. No. 97-300, §§ 301–308, 96 Stat. 1322 (1982); Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, §§ 6301–6307, 102 Stat. 1107 (codified in various parts of 29 U.S.C. (2000)).

255.   42 U.S.C. § 602(a)(7)(A)(i)–(ii). The FVO generally requires caseworkers to screen for domestic violence, determine eligibility for waivers from TANF's work requirements, develop safety plans, and refer battered women receiving or seeking welfare assistance to counseling and other related services. *See* BURT S. BARNOW & CHRISTOPHER T. KING, THE WORKFORCE INVESTMENT ACT IN EIGHT STATES: OVERVIEW OF FINDINGS FROM A FIELD NETWORK STUDY (2005), *available at* http://www.rockinst.org/publications/ federalism/wia/Rockefeller_Institute_WIA%20_Final_Report2-17-05.pdf (describing the streamline of services for job seekers).

256.   *See* U.S. GEN. ACCOUNTING OFFICE, GAO-05-701, TANF: STATE APPROACHES TO SCREENING FOR DOMESTIC VIOLENCE COULD BENEFIT FROM HHS GUIDANCE 4 (2005), *available at* http://www.gao.gov/new.items/d05701.pdf (recommending that HHS issue guidance regarding best practices in domestic violence screening and practices under the FVO); *see also* MARCELLE E. HEARN ET AL., NOW LEGAL DEFENSE AND EDUCATION FUND ET AL., DANGEROUS INDIFFERENCE: NEW YORK CITY'S FAILURE TO IMPLEMENT THE FAMILY VIOLENCE OPTION 24–30 (1999), *available at* http://www.legalmomentum.org/issues/ wel/dangindif.pdf (recommending improved screening tools, better referral information, training for caseworkers, and domestic violence specialists in local welfare offices).

257.   Gaventa, *supra* note 82, at 59–67 (reporting on problems with the administration of training assistance programs); *see* U.S. GEN. ACCOUNTING OFFICE, GAO-01-838, TRADE ADJUSTMENT ASSISTANCE, EXPERIENCES OF SIX TRADE-IMPACTED COMMUNITIES 16 (2001), *available at* http://www.gao.gov/new.items/d01838.pdf [hereinafter TRADE ADJUSTMENT ASSISTANCE] (recounting findings of insufficient funding level for TAA programs).

258.   *See* Ralph Henry, *Domestic Violence and the Failures of Welfare Reform: The Role for Work Leave Legislation*, 20 WIS. WOMEN'S L.J. 67, 80–81 (2005) (noting that women are often denied information about FVO waivers and services to which they may be entitled because of the pressures of federal performance requirements).

259.   *See* U.S. GEN. ACCOUNTING OFFICE, GAO-03-350, OLDER WORKERS, EMPLOYMENT ASSISTANCE FOCUSES ON SUBSIDIZED JOBS AND JOB SEARCH, BUT REVISED PERFORMANCE MEASURES COULD IMPROVE ACCESS TO OTHER SERVICES 24 (2003),

Domestic violence policy activists who have studied the implementation of the FVO are familiar with the structural, cultural, and programmatic deficiencies associated with programs that offer work and training assistance to the unemployed. As a result of their efforts to improve the effectiveness of the FVO, they have identified elements relevant to improving TAA and WIA programs, including the requirement of confidential office space in which to disclose domestic violence and other sensitive issues, and trained caseworkers with whom such problems can be discussed.[260] They have also identified the importance of case management skills in order to bridge the goals between work assistance programs and domestic violence prevention.[261] These programmatic components should be incorporated into TAA and WIA programs to improve outcomes in job assistance efforts, particularly for battered women who are seeking training and work relocation assistance.

Domestic violence and workers rights advocates could join together to lobby for funding for such programs[262] They could establish help centers to guide clients through the burdensome and bureaucratic process of applying for TAA benefits[263] and provide

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available at http://www.gao.gov/new.items/d03350.pdf (noting that older workers receive less in-depth training); BARNOW & KING, *supra* note 255, at 26 (discussing federal constraints); *see also* Laura Lein et al., *With the Best of Intentions*, 7 VIOLENCE AGAINST WOMEN 193, 208–09 (describing lack of FVO services to meet challenges of battered women).

260. Mark Matthew Graham, *Domestic Violence Victims and Welfare "Reform": The Family Violence Option in Illinois*, 5 J. GENDER RACE & JUST. 433, 466–67 (2002) (on the need to train case workers); Alicia Meckstroth et al., *The Future Is Now: Transforming the Welfare System To Identify and Address Chronic Barriers*, 58 POL'Y & PRAC. PUB. HUM. SERVS. 1, 9 (2000) (noting the need for a confidential environment in order to properly screen for domestic violence).

261. *See* Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform for Victims of Domestic Violence*, 5 GEO. J. ON FIGHTING POVERTY 3, 8–9 (1997) (describing tools to screen for domestic violence to assist battered women in making informed choices regarding work, job training, counseling, or waivers from TANF program requirements); *see also* Taryn Lindhorst & Julianna D. Padgett, *Disjunctures for Women and Frontline Workers: Implementation of the Family Violence Option*, 79 SOC. SERV. REV. 405 (2005) (studying the importance of case worker behaviors as related to the provision of domestic violence services to victims).

262. *See* BARNOW & KING, *supra* note 255, at 25 (noting that government funding has been inadequate to provide "universal access to core services").

263. *See* TRADE ADJUSTMENT ASSISTANCE, *supra* note 257, at 18 (noting the "cumbersome, rigid, and highly bureaucratic" administrative requirements in connection with the TAA); NORTH CAROLINA VOICES, *supra* note 110, at 11, 13 (documenting that

comprehensive information about the family violence option.[264] They could also demand an expanded range of TAA and FVO services, including transportation and childcare. As a coalition of activists focused on related agendas, they are more likely to change the culture of these programs to address both the rights of battered women and the rights of workers.

3. Developing progressive criminal justice responses to domestic violence

Scholars and advocates face a difficult predicament when considering the relationship between domestic violence and the criminal justice system. It is inconceivable to return to a time when acts of domestic violence were not criminalized. Responses to domestic violence will always depend on a range of strategies, including the criminal justice system.[265] This dilemma raises what Martha Nussbaum has called "the tragic question": that is the difficulty of determining what choices to make, especially public choices, when there are moral costs on both sides.[266] Nussbaum's interrogation of the "tragic question" is instructive here. She ponders if confronting the "tragic question" of whether "any of the alternatives open to us [are] free from serious moral wrongdoing" may serve to invite the desire to "design a society where such unpalatable choices do not confront people, or confront them less often."[267]

In order to reduce troubling choices when resorting to the criminal justice system, advocates could analyze crime to take into account social context and community characteristics. Responses to crimes of domestic violence could consider the ways individual actions are "shaped and constrained in countless ways by social, political, and economic structures that we take utterly for granted— structures that, in day-to-day life, are virtually invisible—and those

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dislocated workers were cut off from benefits due to the failure to properly complete paperwork and the failure of TAA programs to pay for education courses as promised).

264. Römkens, *supra* note 37, at 272 (describing the failure to screen or provide services to TANF recipients under the FVO).

265. Raphael, *supra* note 74, at 1364 (noting the absence of a single method of intervention for domestic violence).

266. *See* Martha C. Nussbaum, *The Costs of Tragedy: Some Moral Limits of Cost-Benefit Analysis*, 29 J. LEGAL STUD. 1005 (2000).

267. *Id.*

structures are all but impervious to individual choice."[268] The few progressive initiatives that exist with regard to crime and deterrence generally should be incorporated into the disposition of domestic violence cases.[269] Poverty and joblessness should be a focus of sentencing, abuser treatment, probation, and re-entry services in order to improve outcomes for batterers and victims alike.[270]

Restorative justice models that emphasize repairing the harm caused by criminal acts more than emphasizing punishment also offer potentially useful intervention strategies in domestic violence cases.[271] Progressive community policing designed to assist individuals in accessing services such as housing, treatment programs, employment training and placement, and education opportunities as means of crime prevention have been found to be "exemplary practices."[272] These model programs focus on underlying causes of crime rather than simply punishing or "fixing the offender" and include "a more complex recognition of shared responsibility" for criminal acts.[273]

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268. Richard Michael Fischl, *A Woman's World*, *in* LABOUR LAW, WORK, AND FAMILY, *supra* note 172, at 339, 352.

269. For a review of a progressive analysis and approach to crime, see generally Center for Community Alternatives, http://www.communityalternatives.org (last visited Apr. 2, 2007).

270. Sentencing advocacy specialists have developed an effective model of client specific sentencing plans as "reasoned alternatives to incarceration" with support systems that make compliance with the law more likely. *See* The Sentencing Project, *Elements of a Sentencing Plan*, *reprinted in* MALCOLM C. YOUNG ET AL., AN INTRODUCTION TO DEFENSE-BASED SENTENCING 5, 12 (1996), *available at* http://sentencingproject.org/pdfs/1030.pdf; *see also* Christine J. Sutton, *Crime and Delinquency*, 66 FED. PROBATION 61, 61 (2002) (reviewing M. Kevin Gray et al., *Examining Probation Violations: Who, What, and When*, 47 CRIME & DELINQ. 537 (2001) (urging probation services to assist defendants in finding employment)).

271. For a comprehensive review of restorative justice and domestic violence, see *Feminism, Restorative Justice, and Violence Against Women*, 11 VIOLENCE AGAINST WOMEN 5 (2005) (entire volume devoted to this topic).

272. Walter J. Dickey & Peggy A. McGarry, *The Search for Justice and Safety Through Community Engagement: Community Justice and Community Prosecution*, 42 IDAHO L. REV. 313, 375 (2006) (noting that police lack access to social services in contrast with "almost unlimited access to far more expensive criminal justice resources like jails and prisons," thereby assuring that arrests and detention would be the only recourse available to respond to crime); *see also* Donna Coker, *Race, Poverty, and the Crime-Centered Response to Domestic Violence*, 10 VIOLENCE AGAINST WOMEN 1331, 1335 (2004) (suggesting that police provide transportation for a victim, or take a perpetrator to a detox center).

273. Marc Mauer, *Alice in Wonderland Goes to Criminal Court, or, How Do We Develop a More Effective Sentencing System?*, 14 ST. LOUIS U. PUB. L. REV. 259, 266 (1994); *see also* Alan Rosenthal & Elaine Wolf, *Unlocking the Potential of Reentry and Reintegration* 6 (Center for Community Alternatives, Justice Strategies Working Paper, 2004), *available at* http://www.communityalternatives.org/pdfs/unlocking_potential.pdf (advocating for the

These practices and sentencing models are suitable for batterers' treatment programs.[274] Currently, such programs rely on group counseling methods that incorporate a psychoeducational approach.[275] Such programs generally require defendants to abide by program rules which include counseling, random substance abuse tests, payment of program fees, and completion of home assignments.[276] While such programmatic components may be an integral part of changing the behavior of abusive men, as one researcher has noted, they lack a social justice framework within which to consider the effects and causes of domestic violence.[277]

Focusing on the perpetrator's economic circumstances as a factor in batterers' intervention programs and as an outcome of criminal justice intervention serves a number of purposes.[278] As Jody Raphael has argued, the elimination of male poverty is a critical part of domestic violence prevention strategy.[279] In other words, class is a category that must be central to all discussions on domestic violence. Joan Zorza similarly pointed out that "because the police replication studies showed that unemployed men are the least deterred by arrest, future studies should examine whether court-facilitated employment will lower recidivism rates for batterers."[280] After studying risk factors associated with intimate femicide, Jacquelyn Campbell has concluded that increasing employment opportunities for abusers may reduce the

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criminal justice system to consider the phase that includes returning and re-integrating a defendant into society).

274. Standards for programs are still very much under development and, as a result, research results on outcomes are mixed. *See* Ileana Arias et al., *Violence Against Women: The State of Batterer Prevention Programs*, 30 J.L. MED. & ETHICS 157, 162 (2002).

275. Larry Bennett & Marianne Piet, *Standards for Batterer Intervention Programs: In Whose Interest?*, 5 VIOLENCE AGAINST WOMEN 6, 7–8 (1999).

276. Carol Gregory & Edna Erez, *The Effects of Batterer Intervention Programs: The Battered Women's Perspectives*, 8 VIOLENCE AGAINST WOMEN 206, 208–09 (2002) (reviewing components of typical programs).

277. ALAN GREIG, POLITICAL CONNECTIONS: MEN, GENDER, AND VIOLENCE, http://toolkit.endabuse.org/Resources/PoliticalConnections (last visited Nov. 28, 2006); *see also* Bennett & Piet, *supra* note 275, at 8 (describing the "polarities" of the debate about batterer intervention programs as "the pendulum swings between emphasis on effect and attention to cause, between clinical practice and community prevention, and between heuristic and positivist paradigms for knowledge building").

278. FREEMAN, *supra* note 232, at 5 (noting that helping offenders to find jobs has a positive impact on poverty and social issues); *see also* Sutton, *supra* note 270, at 61.

279. Raphael, *supra* note 74, at 1364.

280. Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929, 985 (1994).

rate of domestic violence homicides.[281] Other studies of recidivism rates for criminals, including batterers, suggest that batterers with jobs and ties to the community are less likely to re-offend.[282]

Guided by a political economic analysis of domestic violence, advocates are also more likely to avoid tactics and strategies within the criminal justice system that have an adverse impact on women of color and poor women.[283] By addressing the relationship between domestic violence and social class, advocates could resist wholesale affiliation with the criminal justice system that has previously undermined their ability to be "catalysts of social change."[284] A more constructive criminal justice approach might promise the possibility of comprehensive social changes required to end gender-based violence. These contributions would not only inure to the benefit of domestic violence outcomes, but would also contribute to the development of criminological theory and practice in the realm of social justice.[285]

C. Expanding the Political Terrain of Resistance to Violence Against Women

The challenge of forging alliances among social justice groups is always formidable, especially with regard to the issue of domestic violence. The domestic violence movement has lost allies because it has narrowly adhered to a set of criminal justice strategies that may be harmful to some women, as well as to poor and marginalized

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281.   Campbell et al., *supra* note 163, at 1092.

282.   *See* Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901, 1925 n.59 (2000); Lawrence W. Sherman, *The Influence of Criminology on Criminal Law: Evaluating Arrests for Misdemeanor Domestic Violence*, 83 J. CRIM. L. & CRIMINOLOGY 1, 32 (1992).

283.   For a review of the scholarship that has successfully addressed this intersection, see *supra* notes 48–56; *see also* Coker, *supra* note 27, at 817–20; Das Dasgupta, *supra* note 239, at 1401–03; Jody Raphael, *Domestic Violence and Welfare Receipt: Toward a New Feminist Theory of Welfare Dependency*, 19 HARV. WOMEN'S L.J. 201, 207–20 (1996); Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender*, 11 VIOLENCE AGAINST WOMEN 38, 38–39 (2005).

284.   GREIG, *supra* note 277 (criticizing batterer treatment programs for a narrow focus on the "behavior of individual men rather than . . . structures of oppression").

285.   For a discussion of critical criminology, see Bruce A. Arrigo, *Critical Criminology, Existential Humanism, and Social Justice: Exploring the Contours of Conceptual Integration*, 10 CRITICAL CRIMINOLOGY 83 (2003).

communities.[286] It has also been accused of having remained on the sidelines of debates affecting social welfare policies, despite the impact of such policies on domestic violence victims.[287] Although progressive scholarly developments and policy proposals have addressed how welfare reform affects victims of domestic violence, in the field, domestic violence programs have engaged in disempowering practices related to domestic violence and welfare policies.[288] As a result, domestic violence programs have been criticized for failing to capitalize on the possibilities for "outwardly directed political action" in response to economic and social crises experienced by women in the private realm of the household.[289] This movement has failed to maximize opportunities to connect public political economic events with family dynamics in a way that engages the institutions of power and revitalizes the movement as a political force.

But the problem is not simply that the domestic violence movement has been isolated from the larger mobilization for social and economic justice. Workers rights groups should also recognize their reciprocal interests and shared agenda with domestic violence programs.[290] Joanne Conaghan has urged labor law activists to

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286. SAFETY AND JUSTICE, *supra* note 19, at 15–16 (noting that the domestic violence movement is viewed with caution by social justice movements concerned with economic and civil rights).

287. Das Dasgupta, *supra* note 239, at 1404–05; Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 LAW & POL'Y 205, 207, 223 (1997) (describing the ideological differences between the anti-poverty and domestic violence movements); Raphael, *supra* note 283, at 208.

288. Jody Raphael, Wendy Pollack, Martha Davis, and Joan Meier are some of the academics/activists who have made significant contributions in this area, particularly in regard to the Family Violence Option. *See* Henry, *supra* note 258, at 78 n.72; Judy L. Postmus, *Valuable Assistance or Missed Opportunities?*, 9 VIOLENCE AGAINST WOMEN 1278, 1282, 1285–86 (2003) (describing programs that force women to apply for welfare benefits in order to remain in shelters regardless of their need or desire for welfare assistance, and the failure or refusal of programs to provide referrals to other community services).

289. Meyer & Lobao, *supra* note 155, at 205; *see also* Richard Newman, *From Love's Canal to Love Canal*, *in* BEYOND THE RUINS, *supra* note 109, at 112 (describing women's activism around Love Canal as a function of politics drawn from daily experiences of the household).

290. Edmund Heery & Brian Abbott, *Trade Unions and the Insecure Workforce*, *in* THE INSECURE WORKFORCE, *supra* note 135, at 155–56. The Coalition of Labor Women (CLUW) has taken steps to make domestic violence a union matter and has developed resources for unions to educate their members about domestic violence. *See* Am. Fed'n of State, County, & Mun. Employees, Unions Respond to Domestic Violence, http://www .afscme.org/publications/3113.cfm (last visited Jan. 2, 2007).

expand beyond the specific issues of the workplace and to embrace those concerns that cause "constraints on human realization."[291] Labor unions must show leadership and take responsibility by addressing domestic violence concerns.[292] They can provide union sponsored legal assistance to victims of domestic violence in protection order proceedings and other family law-related matters. Workers' rights groups could target those practices that relate to job security, including expanded statutory benefits for workers who are laid off, while paying particular attention to the needs of victims of domestic violence.[293]

Unions can also employ organizing strategies that draw connections between exploitive working conditions and gender-based violence, including campaigns that support domestic workers who provide child care and housekeeping for their employers and who are often vulnerable to domestic violence.[294] In their campaigns for living wages, worker safety, and benefits, such as an improved Family Medical Leave Act, unions could identify how such demands would mitigate domestic violence.[295] Workers' rights groups could also participate in "coordinated community response" networks that function to bring together a variety of actors to achieve community ownership of the problem of domestic violence.[296]

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291. Joanne Conaghan, *Work, Family, and the Discipline of Labour Law*, *in* LABOUR LAW, WORK, AND FAMILY, *supra* note 172, at 19, 39–41 (quoting Klare, *supra* note 85, at 20).

292. Crain, *supra* note 197, at 1962 (noting that some unions have effectively bargained for leave for victims of domestic violence); Am. Fed'n of State, County, & Mun. Employees, Domestic Violence: What Unions Can Do, http://www.afscme.org/publications/663.cfm (last visited Jan. 2, 2007); Cornell Univ. Indus. & Labor Relations Sch., Domestic Abuse & Violence: A Guide for Union Leaders and Members, http://www.ilr.cornell.edu/extension/wkplace/ (last visited Jan. 2, 2007).

293. *See* Rebecca Smith et al., *Unemployment Insurance and Domestic Violence: Learning from Our Experiences*, 1 SEATTLE J. SOC. JUST. 503, 510–16 (2002) (describing coalition building between domestic violence advocates, unions, and others to pressure business to support expanded unemployment insurance benefits for victims of domestic violence).

294. *See* Stefani Bonato & McKenna Call, Domestic Workers' Rights in the United States: A Shadow Report (unpublished manuscript, on file with author) (documenting acts of domestic violence and sexual assault committed against domestic workers who suffer limited, if any, legal protections against employer-sponsored abuses).

295. *See* Michael Selmi & Naomi Cahn, *Women in the Workplace: Which Women, Which Agenda*, 13 DUKE J. GENDER L. & POL'Y 7, 26 (2006) (noting the difficulty battered women face in using Family Medical Leave Act for absences from work related to domestic violence).

296. ELLEN PENCE & MARTHA A. MCMAHON, A COORDINATED COMMUNITY RESPONSE TO DOMESTIC VIOLENCE (1997), http://data.ipharos.com/praxis/documents/ccrdv.pdf.

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Progressive groups critical of current economic globalization policies also have been criticized by feminists for paying insufficient attention to women's issues.[297] The proposed paradigm shift presents opportunities to infuse a gender perspective into the critical globalization movement. By demonstrating the relationship between global economic policies and domestic violence, opposition to such policies can no longer remain gender-neutral. Integrating domestic violence into the critical globalization movement provides identifiable gender content by which the connections between gender subordination and globalization can be explored and resisted.[298]

Reframing the domestic violence discourse reveals the ways in which market forces reach into households and transform the daily lives of working women and men.[299] It demonstrates to workers and unions concerned with plant closings and job protection that the consequences associated with job loss pervade the private spaces of family. Such a shift establishes the context for connecting work productivity to gender violence with a wide range of issues related to the depletion of the social capital of poor neighborhoods and communities of color.[300] This would advance the best practices of the early battered women's movement that successfully challenged the public/private dichotomy—a bifurcation that feminists have long held has marginalized the condition of women. This ideology underscores the fact that the personal is indeed political—and economic. It would demonstrate how issues of gender, described by Martha Fineman as "theoretically relevant to almost all human endeavors," are specifically "relevant beyond the sexual, the violent, and the familial."[301]

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297. *See* Catherine Eschle, *"Skeleton Women": Feminism and the Antiglobalization Movement*, 30 SIGNS 1741, 1747–48 (2005) (noting that few efforts have been made to connect the critical globalization movement with women's or feminist groups).

298. Marchand, *supra* note 235, at 152 (describing the possibilities of women organizing against the Free Trade Agreement of the Americas).

299. Hacker, *supra* note 110; *see* American Friends Service Committee, LGBT Rights and Recognition: Linking LGBT Liberation to Struggles for Racial, Economic, & Gender Justice, http://www.afsc.org/lgbt/default.htm (demonstrating the relationship between anti-gay marriage initiatives and household economics).

300. MS. FOUNDATION FOR WOMEN, *supra* note 19, at 15 (noting how women of color organizations link their anti-violence work to other issues that impact their communities from war to police brutality to leadership development).

301. Martha Albertson Fineman, *Feminist Legal Theory*, 13 AM. U. J. GENDER SOC. POL'Y & L. 13, 14, 20 (2005).

VI. CONCLUSION

The success of globalization has not been without consequences. The effects of globalization often serve to restructure and rearrange social problems and their potential solutions. Towns and entire city neighborhoods have collapsed and the disparity between rich and poor has deepened. A new form of hopelessness has set in, affecting the hundreds of thousands of men and women who have experienced job loss and the demise of the social structures of community. These conditions cannot but help to shape the behaviors and actions of those who are affected as they relate to domestic violence.[302]

Relating the consequences of the current political economy to domestic violence does not suggest that these relations, without more, produce domestic violence. Nor does it purport to explain the long history of violence against women, one that has been influenced, if not constructed, by periodic social, cultural, and economic transformations.[303] But identifying the nexus makes space for a broader research agenda to emerge—one that considers a fuller panoply of hierarchical influences than patriarchy alone. Furthermore, it is a project rooted in feminist traditions that reconfigure the relationships between the public and the private and the personal and the political while seeking to find common ground with race and class theorists.[304]

Families, and the individual members of which they are comprised, are shaped by the political and economic world in which they live. While the goal to eliminate domestic violence has been sufficiently articulated, the need to eradicate its political economic determinants has yet to be fully grasped. Connecting these issues draws political life out of the household and emphasizes the experiences, needs, and interests of women. The fusion of global economics and domestic violence enhances the opportunity for

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302. *See* JEFFREY FAGAN, THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 1, 26 (1996), *available at* http://www.ncjrs.org/pdffiles/crimdom.pdf (reviewing studies that demonstrate how social and economic conditions affect batterers).

303. *See* PETERSON DEL MAR, *supra* note 10, at 5 (observing that the history of violence against wives in the United States is interrelated to the cultural transformations of the nation); *see also* GORDON, *supra* note 10, at 3.

304. BORDO, *supra* note 15, at 221 (noting the possibilities inherent in feminist theory to discover common ground among diverse segments of society).

creative advocacy while marking the urgency about the need to shift the course.

By developing a synergistic relationship with critical globalization scholars and activists, linkages that are required to problem solve against the backdrop of large-scale changes in the political economic structures may be forged. This would be a transformative project, and one that would require a conceptual revolution for those who are engaged in struggles to protect workers and women.[305] For those committed to ending domestic violence, working both at the global and local level to address the excesses of global capital to which social welfare policies have submitted may be a meaningful alternative to the narrow strategies of adherence to criminalization policies that paralyze progressive action.[306]

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305. *See* Klare, *supra* note 85, at 20.

306. *See* Trubek et al., *supra* note 36, at 408 (urging the interpenetration of the global and the national).