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Panel on Problematizing Assumptions About Gender Violence

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TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER
VIOLENCE SYMPOSIUM:

Panel on Problematizing Assumptions About Gender Violence

UNIVERSITY OF MIAMI SCHOOL OF LAW

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Tamara Lave[†]

Elizabeth MacDowell

Adele Morrison

MACDOWELL: As Beth Richie described in her keynote address, we are here to reimagine a movement to end gender violence, and that goal creates space for a feminist analysis that is at once broader and more particularized than the initial feminist analysis of the problem.¹ So, for example, our analysis can be broader in that we consider the experiences

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted.

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¹ Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Antiracism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257 (2015).

of men as well as women—and, I will argue, perpetrators as well as victims. But what do I mean by more particularized? I mean that we can consider both parties to a domestic violence case in detail, and in relationship to the social stereotypes and norms that adhere to both victims and perpetrators.

The article that I am discussing today, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*,² was inspired by my experiences representing victims of domestic violence in family court, and is part of my effort to try to reconcile inconsistent outcomes in those cases. As an example of that phenomenon, I discuss two child custody and visitation cases with similar facts tried before the same judge. Both involve couples with relatively long histories of domestic violence. The last domestic violence incident in both cases had happened after a period of separation, occurred in public, and resulted in substantial physical injuries to the victims. Both cases had also been preceded by a criminal case where the perpetrator had been found guilty of misdemeanor domestic violence charges. Thus, in both cases there had already been a determination that domestic violence had occurred, what had happened, and who had committed the violence. Moreover, under applicable state law, the victims met the criteria for a number of different kinds of relief, including the issuance of a civil restraining order that could protect the children as well as the victim. There was also a statutory rebuttable presumption that sole custody should go to the victims. Additionally, both victims were seeking supervised visitation with the children for the defendant, and there was a statutory requirement that the judge consider the safety of the children in making her custody decisions, and a strong presumption that supervised visitation was appropriate.

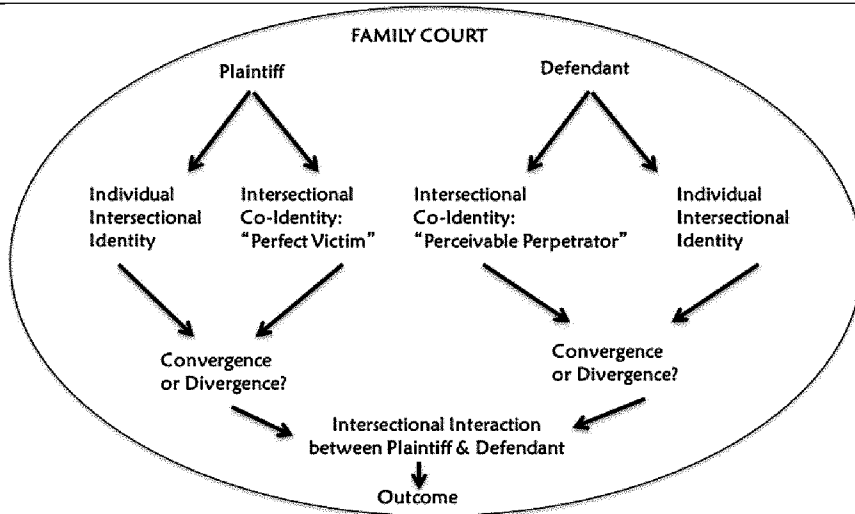
Even with these laws, these orders can nonetheless be very difficult to get, as many of you are aware. But one of the victims in these cases, who I call Sandra, did get supervised visitation, as well as sole custody. The other, who I call Madeline, got custody but was denied supervised visitation. Moreover, unlike Sandra, Madeline was treated as blame worthy by the judge, who ordered her to attend parenting classes along with her children's father. As Madeline said afterwards, "The judge knew I was beat and did not care. I was less than zero." How can we understand these different outcomes?

Critical feminist theories like intersectionality help us to understand why some women may be recognized as victims more readily than others because of the ways that dominate social norms about victims interact

² Elizabeth L. MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. GENDER RACE & JUST. 531 (2013).

with race and gender stereotypes. In particular, scholars like Adele Morrison and Leigh Goodmark have shown how domestic violence law and policy is informed by an ideal of the perfect victim: a female who is white, middle class, heterosexual, and passive.³ Women who diverge from that norm are less likely to be recognized as victims.

Slide 1

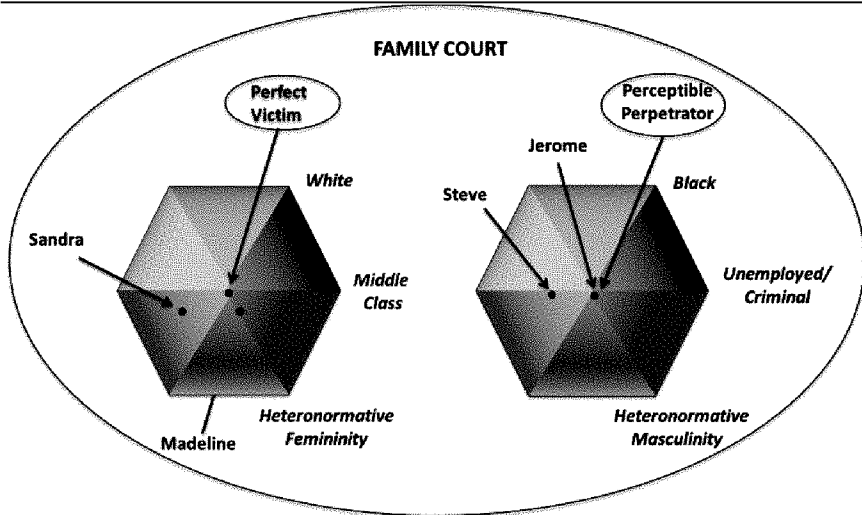


Slide 1 depicts the individual identity of a plaintiff in a domestic violence case alongside a co-identity—in this instance, that of the perfect victim. However, we know that some women who are unlike the perfect victim are successful in cases involving claims of domestic violence, and some women who seem more like the perfect victim are unsuccessful. The question remains what accounts for the difference? One answer is that outcomes also depend on the identity of the perpetrator—the person on the other side of the case—who I call the perceivable perpetrator. Like the victim identity, the identity of the perpetrator is hinged on racialized and sexualized assumptions—this time, about criminality. Investigating this question therefore requires extending critical feminist theory to perpetrators, who have not typically been the subject of a feminist analysis of gender violence. Returning to Slide 1, we must also examine the defendant, whose individual identity may converge or diverge from the perceivable perpetrator identity.

³ See, e.g., Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061 (2006); Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 96–113 (2008).

Returning to my two family law cases, how did the parties measure up to the perfect victim on the one hand and the perceivable perpetrator on the other?

Slide 2



Slide 2 depicts two hexagons crossed by lines that each stands for an absolute value: white, middle class, and heteronormative. The dots in the hexagon on the left depict where Sandra and Madeline are located in relation to those values. Both were heterosexual women employed in semi-professional jobs, but they differ in other ways. The successful victim, Sandra, is an African-American woman. Therefore, I have placed her away from the “White” line, She had also been arrested several times as the perpetrator in incidents with the same defendant and on one occasion was charged with resisting arrest. Therefore, I have placed her far from the heteronormative line. Stereotypes about African-American women and other aspects of her individual gender expression place her further from those values, as well. In contrast, the unsuccessful victim, Madeline, is an American-born Latina for whom English is a first language. She had no history of fighting back or being arrested and she was very feminine in her gender expression. She also appeared traumatized and very vulnerable during her testimony. Because of these various features of her expression, I placed her closer to the white and heteronormative lines than Sandra. Yet ultimately Sandra was the more believable victim. I argue that this is because of the way the identities of the *defendants* played out in the courtroom, as depicted in the slide.

Sandra appeared opposite her African-American ex-boyfriend, Jerome, and Madeline appeared opposite her ex-husband, Steve, who is Latino and non-Latino. Both men were unemployed and again, both had been convicted of domestic violence. In the paper, I discuss more specifically what kinds of stereotypes were in play with the men in these cases and how stereotypes about men of color conform with the perceivable perpetrator image, just as stereotypes about women of color push them away from conforming with the ideal victim. I also discuss the ways in which identity is not static, but is performed within particular settings. I do not think we can assume that Steve had an easy court win because he was perceived as White, but his race certainly did play a factor. While Sandra's persona did not conform to the perfect victim, Jerome's did not conform to a very limited repertoire of available acceptable images for African-American men in this type of setting. That left him as what scholar Frank Rudy Cooper calls the bad Black man: a quintessential, perceivable perpetrator.⁴ Although we cannot know precisely how the judge reached his decision, the routine operation of stereotype suggests that Sandra received her orders for the wrong reasons no matter how right it was for her to receive them based on the evidence in the case, and Madeline was not awarded supervised visitation based on something other than the merits of her case. My conclusion is that if we want to dismantle the stereotypes underlying the perfect victim and understand the differences in case outcomes such as these, we have to acknowledge and dismantle the stereotypes underlying the perceivable perpetrator, as well.

MORRISON: The title of the work-in-progress on which my remarks are based is *That's Just Not the Case—The Heteronormativity of Separation Based Interventions and Why They Won't Help End Domestic Violence*. What I do in this work is to challenge an assumption grounding what is the most prominent legal intervention designed to address intimate partner violence, that being to separate the parties whether through arrest, incarceration, stay away and protective orders or a force/required divorce. The assumption inherent in the law's efforts to keep an individual away from a party whom he, and I am being purposely gendered here, has abused, is that by doing so a batterer has been held accountable for his choosing to be abusive and a victim is safe and well on the road to empowerment. The idea is that this leads to furthering the anti-domestic violence movement's goals of ending intimate partner and gender-based violence. I argue that separation-based

⁴ See Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853 (2006). See also Slide 2.

interventions do not hold a batterer accountable, do not create victim safety and empowerment and ultimately will not help end domestic violence because separation remedies are heteronormative.⁵

I am sure that some domestic violence advocates, activists and scholars, including some in this room, think that being heteronormative is the least of the problems with separation-based remedies and that a more pressing issue is that separation remedies regularly fail to do what they are designed to do, which is to end violence being perpetrated against a particular person at the hands of a current or former intimate partner. Leigh Goodmark and others have pointed out that there are numerous accounts of separation not even effecting minimal interruption to abuse, let alone ending it.⁶ Martha Mahoney has identified the problems with separation by calling attention to the increase in violence upon separation.⁷ My point continues this thread by asserting that even if separation actually did stop person X from abusing person Y, every time it is utilized it has intended and unintended consequences that help perpetuate intimate partner violence because, among other reasons, separation-based interventions are heteronormative.

When I say heteronormative, I mean punitive rules that force us to conform to hegemonic, heterosexual, and cisgender⁸ standards for identity and practice. Heteronormativity constructs normative sexualities and impacts not only those who are LGBT identified, but also those who identify as heterosexual and cisgender. Fundamental to heteronormativity are sexual and gender conformity, which are directly counter to gender equality. Conformity to sexual and gender norms are socially supported aspects of the attitudes and behaviors of a person who chooses to utilize abuse—so too is the abuse used to force heteronormative sex and gender behaviors upon victims. Heteronormativity and domestic violence are similarly problematic in that they both do the following: perpetuate a dominant/ subordinate social structure and help maintain patriarchy, both of which have as a cornerstone gender conformity, which are part of gender subordination.

⁵ MICHAEL WARNER, FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY xxi-xxv (1993).

⁶ LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 81 (2012).

⁷ Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation* 90 MICH. L. REV. 1 (1991).

⁸ The first recorded Usenet post of *cisgender* was in the *alt.transgendered* Usenet group in May of 1994 by Dana Leland Defosse. In April of 1996, Carl Buijs, a transsexual man from the Netherlands said in a Usenet posting “As for the origin; I just made it up.” The origin of the term is logically based on the Latin prefixes, in which “cis” (“on the same side”) is the opposite of “trans” (“on the opposite side”). These terms find use in a range of subjects, including Geometric isomerism in chemistry.

I single out separation interventions because they are the most prominent way the law works against intimate partner violence. I have come to the conclusion that separate interventions may not be completely eliminated they may bring about short or even longer-term safety for individuals, families and friends being victimized. However, the effects of separation can be over punishment. As Jeannie Suk has noted, in punishing a misdemeanor, the state has terminated an individuals' relationship or at the very least made maintaining the relationship a criminal action.⁹ Also, separation does not actually prevent or end domestic violence. There is nothing prohibiting the abusive individual from starting a new relationship and continuing with the old "bad behaviors." The message from the state is essentially, "Try again. Maybe you'll get it right this time."

One might argue that criminal law's utilization of separation actually changes the heteronormative structure by prescribing what is and is not proper masculine behavior. This argument is that criminal laws are broadcasting proper masculinity and thus countering the heteronormative rule by articulating that it is not okay to abuse your spouse or girlfriend and that if you do, the legal system is going to separate you and possibly end your relationship. Arguably, this changes the standard notion of at least gender roles and behaviors within a heterosexual relationship. However, I argue that the opposite results because the criminal law system's coercive control is only implemented with the victim's involvement, and she is constructed in a particular manner and with a particular role. A victim must call the police and cooperate with prosecutors and child protective service. It is still the victim, gendered woman, who is seen as responsible for what has occurred and is still being controlled, this time by the system instead of her partner. Fundamentally, what criminal law is attempting to do is to construct the way individuals behave with intimate partners and doing so by either changing or ending the relationship. However, the relationship is not the problem—the batterer's behavior is. What needs to happen is to get that behavior to change. Criminal interventions may not be able to do this and separation generally does not accomplish this. Not only is changing a relationship not the job of the criminal legal system, it is an impossible task for this system.

State interventions, particularly criminal law based ones, exist in order to punish behaviors that are supposed to be harmful to society in order to specifically or generally deter, incapacitate, rehabilitate or

⁹ See Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2 (2006); JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* (2009).

provide retribution. I argue that if separation based interventions accomplish any of these goals, it is only retribution, and it is retribution based not on the needs of victims or on anti-subordination ideals, but spite. The state is doling out punishment for making it get involved in personal affairs. But even if the criminal law system's responses, including separation, stop one particular individual from violating the domestic violence statutes of a given state, this does not mean: a) that he has abandoned *all* abusive behaviors, just those that violate the law; b) that he has changed mindset about the place or the status of the particular woman he is involved with or women as a whole; or c) anything has been done to undermine heteronormative-based gender subordination. In the paper I explore alternatives such as restorative justice and transformative justice. In the end we must ensure that whatever the approach, it is, among other priorities, not heteronormative.

GOEL: My talk today is about female complicity in domestic violence. I wanted to look at a type of violence that is usually perceived as occurring only in certain countries—violence perpetrated by women on other women, not in the context of same-sex relationships, but in situations where there is a cultural norm supporting the violence. We see it sometimes with female circumcision, female genital mutilation. We also see it in India in dowry deaths or bride burnings. I really wanted to unpack that and figure out—why we perceive it as being culturally entrenched why it happens. Could it help us understand why violence against women is an international phenomenon?

The purpose of this paper is really twofold: first, is to examine that phenomenon of violence against women perpetrated by other women in that context of dowry deaths and bride burnings; second, to uncover the ways in which we limit our understanding of violence against women by notions of who the perpetrator is and who the victim is. Our understanding of domestic violence, and particularly our understanding about violence against women, is a story of worldwide oppression where the picture of our victim is female, and the perpetrator of violence is usually a man. But some cases defy that understanding and they force us to revisit those notions of women and of violence altogether.

I am struck by the way we approach domestic violence differently in different contexts even though we recognize it to be a universal phenomenon, and we recognize the world to be universally patriarchal. Depending on the context, we problematize it very differently and we perceive it very differently. So, I will look at dowry deaths in India. There is a phenomenon in India that involves young brides, or women who have not been married for a very long time, being subjected to harassment, torture, and abuse in the homes of their in-laws. Most are living in a joint family system where they live with their husband and his

parents. These brides are harassed because they did not bring enough dowry or because the groom's family wants the bride's parents to provide money on an ongoing basis. The bride or the young woman in this case is used as leverage. Her parents are quite aware that if they do not comply with the requests or demands for money, their daughter will have a much more difficult experience in her marital home.

These brides are harassed for more dowry, abused, and sometimes even killed. The most common method of killing in these cases seems to be to douse her with kerosene and light her on fire. The in-laws can call it a kitchen accident; "she was cooking something, and her sari (six yards of fabric she's wearing) caught on fire, (because in India, all of the cook stoves are gas stoves—nobody uses an electric stove) and she was just enveloped in flames, there was nothing we could do."

In India, we have seen in ten years, 79,404 registered cases of dowry death.¹⁰ That cannot be happening where the mother-in-law in the home does not know. She is either complicit, or she is at least aware and that is a very scary thing. Some women who survive have said, "my mother-in-law was the one who held the match." We hear horrible stories that in fact, the mothers-in-law were involved.

We are not really sure about the numbers of mothers-in-law who participate because we do not have studies on those women who participate in these killings and attempted killings.

It is difficult to determine conclusively why that happens and how much it happens. First of all, because the very notion of women killing at all is aberrant. It is such a small set of violent crime. The notion of women killing other women is so tiny that you cannot even find it in the literature; you cannot find a study.

Why do these women kill? We do have a number of theories, almost all of which portray the other woman, the mother-in-law, as also a victim: 1) because women are so perpetually devalued that they begin to see themselves and other women as worthless and subhuman; 2) because oppressing women is a kind of survival mechanism—they know if they do not oppress the other woman, they might be oppressed themselves; 3) because it is some kind of resistance for them—it is their last grab at power in a world where they have no power at all or very little power; and 4) we also hear that because it is part of their culture, which is a complex interaction of history, religion, social class, social familial circumstances, wherein this conduct even though it is not acceptable, it is understandable. All four of those theories involve the perpetrator woman being some kind of victim. It is only the last theory that includes the idea

¹⁰ NAT'L CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, CRIME IN INDIA 2013 (2014), available at <http://ncrb.gov.in/index.htm>.

that they are just evil, power hungry, angry people. It is only that one that actually involves some full agency on the part of the perpetrator woman. I wanted to ask then, how is this qualitatively different than the other kinds of female-on-female violence that we are familiar with?

We actually do have three primary archetypes of women who hurt other women. The first archetype is the evil stepmother. The evil stepmother is punishable because she cannot love other people's children as she does her own children. She is supposed to be compassionate and nurturing, but the evil stepmother sees herself in competition with these children for the husband's resources. The second archetype is the whorehouse madam who exploits other women and their sexual favors for monetary profit for herself. It is disconcerting to us that she exploits her own kind, but we also find it a little bit admirable because she is entrepreneurial and she is exploiting a weakness, the sexual insatiability of men. And the third archetype is the evil mother-in-law who is griping and controlling because her son has married someone who she thinks is not good enough for him. But even this is not an evil mother-in-law who will kill.

So, the real question is how do we respond to this kind of violence? We can call it cultural and intractable and do nothing; we can say it is cultural and systemic but changeable, and try to change this huge problem of attitude toward women and say that the mothers-in-law are also victims; or we can consider those women evil, aberrant, and deserving of punishment

We do not have clear ways to understand where the line is between victim and offender in the context of women, because for women most of our theories limit their agency and describe them as victims, too. Many believe the system itself helps to perpetuate violence, they believe that we have men who are trapped in a cycle of violence just the way women are trapped in a cycle of violence, and yet we still believe that those men are in need of punishment, accountability, responsibility, reform, or rehabilitation. But unless women fit one of those archetypes, we really have no idea what to do with them. We are really stuck with our notion of women being victims all the time and the perpetrators always being men. So, there are no ways that women can legitimately express their anger, their frustration, and their lack of power. Our notions of how victims are situated and how offenders are situated prevent us from dealing with these particular kinds of violence.

TRANSCRIPT^o

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER
VIOLENCE SYMPOSIUM:

Panel on Intersections of Gender, Economic, Racial, and Indigenous (In) Justice

UNIVERSITY OF MIAMI SCHOOL OF LAW

*James Ptacek (moderator)^{**†}*

Margaret Johnson

Nicole Matthews

Hillary Potter[†]

MATTHEWS: Hello everyone, my name is Nicole Matthews. I am Ojibwe from the White Earth Reservation in Northern Minnesota. I come to this work not as an academic but as an activist, as a woman who has both experienced violence and seen violence in my home, who has many female relatives who have experienced violence. I also come from a grandfather who survived boarding school. I bring all of this to who I am and to why I do this work. I never wanted to do research; I never wanted to do public speaking; and, now I do a lot of talks about the research that

^o This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted.

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we did on trafficking. So, you just never know where life is going to bring you.

I am going to talk a little bit about our research¹ and then a little bit about our experience and the status of Native American women today and where all of that has brought us—the impact of colonization for tribal people, and what that means when we are talking about how Native American women have, suffered the highest rates of violent victimization.² Just last week, I was at a trafficking conference with a Minneapolis law enforcement officer who does work on trafficking with youth. He told me that, in Minneapolis, where I live, 85% of his victims are Native Americans, yet Native Americans comprise less than 5% of the total population there. So, when you look at the numbers, Native people are disproportionately being used and exploited.

When we did the research it was because we wanted to know how we could help and we wanted to know what was happening to our sisters in the community. We wanted to hear their voices. We wanted them to tell their/our story, what they needed, what kind of *justice* they needed, and what would help them escape prostitution and trafficking. This is why I get excited about sharing this information. For me, it is all about the women's voices informing the work that we do on the ground.

I want to start by talking about the sheer invisibility of Native American women on so many different levels—whether in academia, advocacy, or the criminal justice response. So much of our focus in the last ten years has been on enhancing the criminal justice response to the victimization of Native American women simply because we have none. I struggle with the call to *decrease* this response when there really is not much of one to begin with.

In the reservation that I am from, several years ago, and it has not improved much since the relationships between the County and the State and the Tribe were so strained that women would call 911 and *nobody responded* because everybody would argue over who had jurisdiction. In addition, you add on a layer of colonization that has broken up our families, broken up our communities, and we often just do not have the same level of community support that we once had. Many abused and exploited Native American women are left with no response from their community when they need it most. What do we do to address that?

¹ Nicole Matthews et al., *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*, 2011, http://www.prostitutionresearch.com/pdfs/Garden_of_Truth_Final_Project_WEB.pdf.

² See generally *The Facts on Violence Against American Indian/Alaskan Native Women*, FUTURES WITHOUT VIOLENCE, <https://www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf> (last visited May 21, 2015).

I was very happy to go to Val Kalei Kanuha's workshop yesterday³ and hear about not equality but balance, because I talk so much about balance and restoring balance in our communities. To me, it is not about men and women as equals, but about how we each have our different roles and how we are in balance and in sync with one another. We look at and talk a lot about what that means in tribal communities. What does it mean that for many years we were stripped of our spirituality and were unable to practice fundamental inherent right to practice our own spirituality? For so many years, our practice of our spirituality was kept underground, or simply not practiced at all. Generations of our community, of our relatives, were denied this right—it was beaten out of them. They were taught: you do not get to talk your language; you do not get to practice your culture; you do not get to have your own spirituality. What does that do to a person? What does it do to your life when you do not have a simple belief that you can hold onto that tells you that when you wake up in the morning, things are going to be okay?; that you have that sense of belonging and community?

The experience of boarding schools in our community impacted our parenting, because we learned from our parents what our roles were in our families. We often talk about walking in two worlds—walking with our Native sisters and our Native communities in one world, but also having to walk in a White world that does not always see or value us. When they do see us, there are a lot of stereotypes at play about who we are. We are seen as mascots, drunks. People ask me all the time, “Isn't the violence so high in your community because your alcoholism rate is so high?” “Isn't violence just a part of your culture?” In fact, our cultural beliefs really *upheld* women and children as sacred and many of our tribes were matriarchal. Now, however, due to the impact of colonization, much of our culture is patriarchal.

I want to briefly mention the role of blood quantum and the stripping of our land and our resources. Blood quantum was a federal policy put into place, in essence, to wipe us out and to strip us from our land and our resources.⁴ It was a sort of a made up notion, and we have since divided ourselves based on the notion of blood quantum. I am happy to say that there are more and more tribes now getting away from that notion and having enrollment based on descent and not who has

³ Sarah Deer et al., *Panel on Colonization, Culture, and Resistance*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 325 (2015).

⁴ For more information regarding Blood quantum, see ONEIDA TRUST AND ENROLLMENT COMMITTEE, *What is Blood Quantum?* https://oneida-nsn.gov/uploaded/Files/wwwroot/Government/Boards_Committees_Commission/Elected/Trust_Enrollment_Committee/June.27.BloodQuantum.pdf?AspxAutoDetectCookieSupport=1 (last visited May 22, 2015).

more blood. If you look at the federal policy, the government wanted our resources and our land so they told us if you are this much percentage of a certain bloodline, then you can have this much land. For African Americans, it was the “one drop” rule because the government wanted to keep people in slavery.⁵

Federal policies have clearly impacted our community in dividing us and keeping us in government-controlled systems. For example, we now have “reservations”—really crappy pieces of land that the government put us on, that are finally now realizing some actual property value, due to their valuable natural resources. The problem is, our resources are now being exploited yet again which has led to an astronomical increase in trafficking, violence against women, exploitation, economic, and environmental violence in our communities. We are working very closely with tribes in North Dakota on how they are addressing trafficking and how we can learn from each other what we have heard from the women in our research.

I want to talk a little bit about what we learned from the women. One of the women told us that some of the things the men said to her and some of her experiences were so difficult that she did not want to say them out loud. One of the women talked about how one “sex buyer” wanted her to play Pocahontas and he wanted to play John Smith. What do we know about Pocahontas? One could argue that she was our first victim of trafficking because she was taken from her land to another foreign land, and she was nothing like what the Disney character looks like in the movie “Pocahontas.” She was actually a very young child, and not at all sexualized and curvy as Disney would have you believe. Another woman talked about a “John” saying to her, “I thought we killed all of you.” There is violence in that statement, in that notion of the invisibility of our culture—Indians are just extinct, we are absent. Even in history books, we are talked about as if we exist only in the past.

I have been struggling with and thinking a lot about tribal strategies and justice—what justice in this context even means. Years ago, some of our tribal strategies were around banishment. In essence, if you banished a person from his or her tribal community, it was almost a death sentence because our communities were so reliant on each other for survival. What does that mean today, however, when someone can go from one tribal community to the next or come down to the “urban area”? Most of us no longer live on tribal lands. So, how can we restore balance to our community in light of this? What are our new cultural strategies? How

⁵ For more information regarding the “one drop rule,” see F. James Davis, *Who is Black? One Nation’s Definition*, PBS FRONTLINE, available at <http://www.pbs.org/wgbh/pages/frontline/shows/jefferson/mixed/onedrop.html>.

do we make old strategies relevant today? We work with youth and talk about coming-of-age ceremonies, but for some of our youth, these ceremonies seem pretty irrelevant today. How do we make them relevant again?

For my tribe, one of the coming-of-age ceremonies for young women when they first go through their cycle is a one-year fasting. There are certain things you cannot eat; you cannot step over babies; you cannot swim. You have a feast, and you have women, your elders, come in to give you teachings about the respect of giving life, the respect that you have of carrying that gift, and being a woman. For many of our girls who do not live in our tribal communities, who could not care less about berries and deer meat and fish, they could not care less if they have to give up that ritual. Maybe they are not near a lake, so not being able to swim does not mean anything to them. So we talk about what is possibly equal to that? What can you give up instead? Some girls said they will give up their iPods for a year, or they will not eat french fries for a year. What are the relevant teachings today to still have these important coming-of-age traditions in place?

For our young boys, it is about their first kill, and how they use that skill to feed their community. Well, all of our boys are not hunters anymore; they are in the city. So, maybe it is buying some groceries and bringing them to an elder in their community that should happen. What should these parallel teachings look like? How do we make our cultural traditions and practices relevant for our communities today, in order to restore the community balance we once had?

I strongly believe that we can come up with community strategies. I know we have had a rich discussion about community and the fact that our communities are not really intact right now, so community strategy is what we do to actually restore balance to our community. But, I strongly believe that, for tribal communities, these strategies need to be rooted in our cultural traditions and our long-standing cultural beliefs. Thank you.

JOHNSON: This presentation⁶ envisions what a better domestic violence legal system might look like for persons subjected to domestic abuse who have not had their needs met or who have been harmed by the current legal system. The paper reframes the focus of the civil legal system from a paradigm of safety into a paradigm of security, including economic, housing, health, and relationship security. This reframing permits a focus on the domestic violence legal system and its intersecting systems of oppression such as race, gender, class, and ethnicity.

⁶ This presentation is based on the following article: Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Legal Movement: From Safety to Security*, 60 VILL. L. REV. 145 (2015).

Currently, the domestic violence legal system targets short-term physical safety of the person subjected to abuse. This safety is accomplished through physical separation of the person who was subjected to abuse from the person who committed the abuse. For instance, this targeting exists in the mandatory criminal justice system's response to domestic violence with mandatory arrest and no drop prosecution policies and with the remedies available in the civil protection order, such as the stay away, no contact and ejection from the home provisions. The goals of the domestic violence civil legal and funding policies should be to decrease domestic violence and to help persons subjected to abuse lead satisfied lives. To achieve this shift, we need to reframe the domestic violence policy and legal system from solely safety to security. The safety paradigm replicates the problematic victim/agent paradigm. The construction of safety reinforces our gender and other stereotypes of people and creates a worthy victim/worthy agent paradigm. This construction of safety is problematic because it undermines the agency of the person subjected to abuse; it undermines that person's ability to make her own choices. It constructs the person subjected to abuse as living in a world of dangers and havens. The dangers are identified and removed by persons external to the person experiencing the abuse. Because the danger is constructed by others, it does not address the full experience of the person who is subjected to abuse—how she is viewing her experience of the abuse and her life. For instance, domestic violence is the leading cause of family homelessness. One wonders whether homelessness sometimes results from others forcing the separation of the person being abused from the person who caused the abuse without exploring the existence of housing alternatives. Also, the havens designated by others are not necessarily havens that the person subjected to abuse believes she needs. Even if the person wanted to be safe, the havens are not necessarily based on what she thinks would make her safe and therefore those havens do not necessarily effectuate even the very limited, problematic goal of short-term safety. Ignoring her identification of havens is problematic given the research that women subjected to intimate partner violence are the best predictors of the risk of future assault and separation assault.⁷

Additionally, it is problematic that society does not permit women subjected to abuse to reject safety as a goal when it is in conflict with their other important goals. The paradigm of safety is also problematic because it prioritizes the criminal justice system response to domestic violence. The largest percentage of anti-domestic violence policy public

⁷ Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 558–60 (2010).

funding is funneled to the criminal justice system. For instance, under VAWA, \$189 million were allocated to STOP grants furthering the criminal justice response and only \$25 million were allocated to transitional housing units.⁸ Such money could be more effective if shifted to security programs. Another reason the paradigm of safety is problematic is because it requires that the partner of the person who has been subjected to abuse be deemed unsafe. The partner is always the danger, thereby blocking the continuation of a relationship even when the person subjected to abuse wants to continue it.

As an alternative to the safety paradigm, I propose a security paradigm that could more effectively decrease intimate partner violence and increase life satisfaction for persons subjected to abuse. Cybersecurity experts state that our national computer network will never be safe from hackers and instead, we should aim to create a network that is secure, resilient and able to withstand and recover from breaches of security.⁹ Similarly, our legal system and funding schemes addressing domestic violence could benefit from focusing on supporting resiliency for those persons subjected to abuse—security—rather than safety.

There are four reasons why security is a more helpful goal than safety. First, security can permit persons subjected to abuse to be an agent—someone who can identify the goals she has regarding the abuse and make informed decisions of how best to achieve the goals rather than having outsiders define the dangers and havens for her. The research shows that when women subjected to abuse are able to be connected to their community, to control their physical environment by leasing or owning their own home, or to build assets, violence can decrease.¹⁰ And when persons subjected to abuse make their own informed decisions around physical separation or what is safe, they are more satisfied with their lives and, therefore, less at risk of physical violence.¹¹ When we shift the frame to security from safety, we permit the goals of persons subjected to abuse to drive what options exist. And when we see these

⁸ FY 2013 APPROPRIATIONS BRIEFING BOOK (Campaign for Funding to End Domestic Violence and Sexual Assault) at 6, 8, http://nnev.org/downloads/Policy/FY_13_Briefing_Book.pdf.

⁹ P.W. SINGER AND ALLAN FRIEDMAN, CYBER SECURITY AND CYBERWAR: WHAT EVERYONE NEEDS TO KNOW 36 (2014).

¹⁰ Kameri Christy-McMullin, *An Evidenced-Based Approach to a Theoretical Understanding of the Relationship Between Economic Resources, Race/Ethnicity, and Woman Abuse*, 3 J. Evidence-Based Soc. Work 1, 23–25 (2006).

¹¹ Angela Moe Wan, *Battered Women in the Restraining Order Process: Observations in a Court Advocacy Program*, 6 VIOLENCE AGAINST WOMEN 606, 611 (2000); Sherri Lawson Clark, et al., *Housing Dependence and Intimate Relationships in the Lives of Low-Income Puerto Rican Mothers*, 32 J. FAMILY ISSUES, 369, 385 (2010).

goals come into focus, we are seeing complex and multiple goals driven by a person's whole life experience.

The second reason security is a more helpful frame is because it provides the opportunity to see domestic violence as a systemic operation of power that intersects with other systemic operations of power such as poverty and racial injustice, and we can focus on varied actions taken by the persons subjected to abuse as opposed to those just taken on behalf of them by others. With a safety paradigm, police will make mandatory arrests, prosecutors will prosecute, and there will be criminal justice system interventions even if unwanted by the person subjected to abuse. In a security paradigm, the person subjected to abuse may choose to have the person committing the abuse arrested or not, prosecuted or not. In addition, economic security comes into sharper focus in a security paradigm and we can identify additional areas for legal reform. For example, there is a need to block coerced debt from affecting the credit scores of women who are subjected to abuse.¹² Every jurisdiction should pass unemployment insurance provisions, as we did in Maryland that define domestic violence as good cause for leaving employment, thereby permitting unemployment insurance benefits. Every state and the federal government should pass a living wage bill. Communities should increase micro-lending programs to help build the assets of women subjected to abuse. States and Congress should pass legislation to provide guaranteed leave from work and anti-discrimination housing and employment laws for persons subjected to abuse. In addition, communities should employ empowerment career counseling to help persons subjected to abuse seek good employment.¹³ States should amend their civil protection order laws to provide monetary damages if they do not already provide this remedy beyond child or spousal support.

Third, the security paradigm focuses on the need to build strong community networks and support for the dignity of persons subjected to abuse. Dignity is important because it is linked to greater satisfaction and happiness in the lives of persons subjected to abuse.¹⁴ Focusing on strong community networks helps to build social capital, "social relationships

¹² Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 390–408 (2013).

¹³ Krista M. Chronister & Ellen Harley McWhirter, *Applying Social Cognitive Career Theory to the Empowerment of Battered Women*, 81 J. COUNSELING & DEV. 418, 422 (2003).

¹⁴ Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 B.Y.U. L. REV. 1, 16–17 (2014).

based on trust that have value or can be used productively,”¹⁵ which in turn enhances security.

Finally, a security focus permits us to look at the overall well-being of persons subjected to abuse. Such a focus is consistent with Mary Ann Dutton and Lisa Goodman’s coercive control research, which identified nine areas of coercive control—personal activities and appearance, support social life family, household, work economic resources, health, intimate relationship, legal, immigration, and children.¹⁶ A security paradigm, unlike a safety paradigm, is able to address all of these areas and therefore can address the experience of persons who are subjected to abuse.

¹⁵ JO ANNE SCHNEIDER, SOCIAL CAPITAL AND WELFARE REFORM: ORGANIZATIONS, CONGREGATIONS, COMMUNITIES 9 (2006).

¹⁶ Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 747 (2005).

