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## Financial Freedom: Women, Money, and Domestic Abuse

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FINANCIAL FREEDOM:  
WOMEN, MONEY, AND DOMESTIC ABUSE

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INTRODUCTION

*And yet the same question, “Why doesn’t she leave him?” or its obverse, “Why does she stay?” continues to gnaw at the moorings of the domestic violence revolution. The durability of abusive relationships remains their central paradox . . . .<sup>1</sup>*

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1. See EVAN STARK, COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE 113 (2007). Evan Stark and other advocates dedicated to ending abuse know all too well that these questions are based on incorrect assumptions about women who experience

This Article examines the connections between gender,<sup>2</sup> violence, and money. Financial impediments, in particular, play a major role in restricting the freedoms enjoyed by women who are abused by their intimate partners.<sup>3</sup> Economics has both an empowering and disempowering influence on abusive relationships.<sup>4</sup> While a batterer is empowered by his partner's financial dependence, the autonomy of a woman who is victimized is diminished by her abuser's ability to control her through financial means.<sup>5</sup> Moreover, financial instability is one of the greatest reasons why, after gaining freedom, a woman who experiences battering has limited choices and may ultimately acquiesce to her partner's attempts to reconcile.<sup>6</sup>

Economic instability is a link that binds a woman to her abuser.<sup>7</sup> Regardless of the interveners in her case—law enforcement, family,

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intimate partner violence. As Stark explains, “[i]t is the [batterers] who stay, not their partners.” *Id.* at 130.

2. The focus of this Article is on female survivors of intimate partner violence, not male victims. The author will refer to survivors of domestic violence with the use of female personal pronouns for several reasons. First, this Article considers the influence both gender and economics have on intimate partner violence. Second, although intimate partner violence is not exclusively a crime against women, women constitute a significant percentage of those individuals experiencing intimate partner violence. According to the Bureau of Justice Statistics, “[f]emales are more likely than males to experience nonfatal intimate partner violence.” See *Intimate Partner Violence in the U.S.: Victim Characteristics*, BUREAU OF JUST. STAT., <http://www.bjs.gov/content/intimate/victims.cfm> (last visited Jan. 10, 2014).

3. The use, meaning, and influence of the phrases “women who are abused” or “women who experience domestic abuse” as compared with the term “battered woman” demands consideration. According to Elizabeth Schneider,

the term “battered woman” has a restrictive meaning—a meaning that defines a woman exclusively in terms of her battering experience. It also suggests that the term carries a negative connotation from which an individual woman may wish to distance herself . . . Compare the static term “battered woman” with the phrase “woman who has been sexually harassed” or even “woman who has been raped.” These terms describe a woman who has been subjected to an external harm: they focus on the problem of the harm—sexual harassment or rape—and leave the woman intact. In contrast, “battered woman” does not capture the range and complexity of a woman’s experiences beyond the facts of abuse. The term makes her the problem, not her experiences.

ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 61 (2000).

4. *Economic Abuse*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE, [http://www.uncfsp.org/projects/userfiles/File/DCE-STOP\\_NOW/NCADV\\_Economic\\_Abuse\\_Fact\\_Sheet.pdf](http://www.uncfsp.org/projects/userfiles/File/DCE-STOP_NOW/NCADV_Economic_Abuse_Fact_Sheet.pdf) (last visited Jan. 10, 2014).

5. *Id.*

6. For survivors of intimate partner violence, there are a number of barriers that dramatically decrease the likelihood of liberation from the cycle of abuse. *Domestic Violence and Barriers to Leaving*, CITY OF RENTON, <http://rentonwa.gov/living/default.aspx?id=1582> (last visited Jan. 10, 2014). These factors include, but are not limited to, the risk of harm, social factors, law enforcement response, system response, homelessness, economic dependence, and poverty. *Id.*

7. See *infra* Part II.

or friends—as long as she remains financially dependent upon her abuser it is exceedingly difficult for a woman who experiences intimate partner violence to put a stop to the batterer's control over her. Arrest of the perpetrator, incarceration for a period of time, entry of a criminal no-contact order, or the provision of a civil protection order are all appropriate responses to intimate partner violence. Yet, without ensuring that a survivor of domestic violence has food security, housing stability, healthcare, childcare, adequate transportation, as well as reasonable assurances of continuing resources or a guarantee of enforcement of any court ordered relief, a batterer will continue to maintain his power to abuse and control.

Economic independence can provide freedom from abuse. Yet, when it comes to economic independence, gender matters. Given the historical experience of women in the labor force and contemporary social factors, many women today continue to be financially dependent on their partners, women in abusive relationships in particular. Financial inequality is central to the female experience; it has shaped her role within the marital relationship, diminished her autonomy, influenced her place within the labor force, and nurtured her oppression.

Early on, marriage and childbirth played a fundamental role in the extent to which women participated in the labor force.<sup>8</sup> Yet even today, marriage and children continue to negatively influence the extent to which women engage in work for pay. A woman's absence from the labor force results in diminished economic power within the intimate relationship, as well as society generally. Inequality results in reduced options for women which in turn places them at risk for maltreatment. Not surprisingly, much of modern day economic instability of women derives from our past. Part I of this Article explores the history of women, money, and oppression, providing a framework for understanding the barriers women have faced over time and verifying the ways in which access to fundamental resources and a promise of economic equality play a vital role in the fight against intimate partner violence.

In Part II the connections between intimate partner violence, capital, and power are considered. The exploration of batterer targeting, entrapment, and economic abuse indicates that access to resources and safety are closely tied.

Civil protection orders were created to provide an alternative to criminal prosecution, as well as to address the distinct needs of women who are abused by their intimate partners. These civil orders were

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8. See *infra* Part I.

formulated to both protect survivors of domestic violence and provide the resources necessary to ensure freedom from abuse. The civil protection model, however, is not without its limitations. These insufficiencies, as they relate to the financial instability of survivors, are considered in depth in Part III of the Article.

The reason for women's increased risk of poverty at the time of separation is multifaceted. Women generally are vulnerable to poverty due to social welfare policy, wage inequality, gender discrimination, diminished access to capital, and a history of inequality. Additionally, our legal system's failure to respond adequately to crimes committed against women, in particular, and to provide the relief necessary to protect them from male exploitation has placed women who are abused at even greater risk of both poverty and violence.

Not only do women who experience battering face gender discrimination, job sex-typing, and wage gaps within the labor force, they also experience a multitude of employment-related problems created by their batterers. Perpetrators of intimate partner violence tend to be ultra-controlling. A batterer may restrict his partner's access to resources, exploit or destroy her property, or diminish her ability to build social capital.<sup>9</sup>

Yet, labor and wage parity alone will not solve the problem. Our government must step in and make available the resources necessary to guarantee stability and safety for women and their children. Moreover, holding batterers accountable for both their actions and responsibilities plays an important role in solving this crisis.

### I. A HISTORY OF INEQUALITY

*The key to understanding woman's present and future economic position in the capitalist world lies in history. For history is not simply the compilation of facts, but, at its best, the discovery of the general principles and process that have given rise to these concrete experiences; not simply the study of the past, but the study of the creation of the present and future.*<sup>10</sup>

A consideration of the history of the marital relationship and gender based division of labor is critical to understanding the ways in which money and power within that marital relationship influence

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9. See *infra* Part II.C.3.

10. JULIE A. MATTHAEI, AN ECONOMIC HISTORY OF WOMEN IN AMERICA 3 (Harvester Press 1982).

male violence against women, as well as the economic challenges women continue to face today.<sup>11</sup>

The colonial period signifies the long-term struggle for women in America both for financial independence and freedom from male oppression.<sup>12</sup> It is the historic oppression of women through physical and sexual abuse which paved the way for male economic dominance over women.<sup>13</sup> Male violence against women, the economic dependence of females on males, and the legal and social justifications for male dominance are so closely linked that it is difficult to consider one without addressing the others.

It is clear that there is a strong connection between the economic struggles women experienced in early America and the status of women within the marital relationship.<sup>14</sup> Marriage gave a man power over his wife.<sup>15</sup> Marriage provided a man with the power to control the property and finances of his wife, as well as her sexual activities, social status, and liberty.<sup>16</sup>

In early American history a woman was not permitted to own property and was, in fact, the property of the men in her life; first her father or brother, later her husband.<sup>17</sup> A colonial man was permitted to “chastise” his wife through corporal punishment.<sup>18</sup> The husband controlled a woman’s experiences with and in connection to the local economy.<sup>19</sup> He was the decision-maker, holding all the

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11. See STARK, *supra* note 1, at 113 (“[S]exual inequalities remain deeply embedded in economic and personal life in the United States and other highly industrialized societies.”).

12. MATTHAEI, *supra* note 10, at 36.

13. *Id.*

14. See MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN* 54 (1982) (“Colonial society expected married women to be subordinate to their husbands who by law and custom controlled women’s labor and access to economic resources.”).

15. *Id.*

16. *Id.* at 54–55. Abramovitz details the legal and social consequences of marriage on women:

English Common Law, the basis of much American Law, caused married women to suffer “civil death” by holding that in “marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage . . . . A married woman’s inheritance, property, income, and even her clothing belonged to her husband, who could sell her possessions without her consent. She could not buy or sell, make contracts, sue in court, or be sued without her husband’s permission. Married women could not even claim their children in cases of legal separation.

17. See *id.*; see also Carole Shammas, *Re-Assessing the Married Women’s Property Acts*, 6 J. WOMEN’S HIST. 9, 9 (1994).

18. Some English common laws, such as the “rule of thumb,” were adopted by the colonists. The rule of thumb enabled a colonial man to punish (chastise) his wife as English men were permitted to do. See NANCY K. LEMON, *DOMESTIC VIOLENCE LAW* 6 (2009). Such laws continued the historical practice of men having the power to control their wives through corporal punishment.

19. ABRAMOVITZ, *supra* note 14, at 75–76.

power. As a result, much of a woman's life experience depended greatly on the man she married.<sup>20</sup> If she married a perpetrator of intimate partner violence, she was at great risk of suffering abuse with little protection or avenue of escape. Her abuser had the ability to control her life and work experiences unrestrained.

A colonial woman's work experience was closely tied to her marriage relationship.<sup>21</sup> In fact, the colonial marriage relationship is one of the predominant factors which encouraged the economic dependence of women in our nation, an economic dependence which, in turn, made women vulnerable to male sexual exploitation and physical abuse.<sup>22</sup> These practices were supported by a legal system which fostered the entrapment of women through both property<sup>23</sup> and criminal law.<sup>24</sup>

One historian in particular, Julie Matthaei, provides a detailed account of the economic history of women in America.<sup>25</sup> Although Matthaei's exploration does not directly address the relationships between battering and money, her consideration of women's economic experiences within the marital relationship and the labor force provides important information about the connections between gender and economic dependence. In turn, understanding the role history has played in the economic dependence of women is important to identifying how perpetrators of intimate partner violence gain and maintain control in an intimate relationship. As a result, Matthaei's work, as well as the work of other researchers, is analyzed in this section to provide the reader with a basic understanding of the connections between gender, violence, and money.

According to Matthaei, in colonial America the vast majority of a married woman's production was for the household, while a man's production was for sale.<sup>26</sup> The work of the man was to earn wealth

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20. *Id.* at 76.

21. See MATTHAEI, *supra* note 10, at 36.

22. *Id.*

23. The law's restriction on female property ownership placed women at the mercy of men. See Evan Roberts, *Woman's Rights and Women's Labor: Married Women's Property Law Reform and Labor Force Participation, 1870–1900*, at 99 (Aug. 28, 2007) (unpublished Ph.D. dissertation, University of Minnesota), available at <http://paa2008.princeton.edu/download.aspx?submissionId=80072> (considering the effect of property laws on women's participation in the labor force).

24. Although the colonies established some laws to protect women from severe abuse by their husbands, "these laws were not strictly enforced, and domestic assaults were typically excused if a husband could 'justify' his behavior." See LEMON, *supra* note 18, at 6. Moreover, chastisement of one's wife was an accepted practice. *Id.*

25. MATTHAEI, *supra* note 10, at 39–299.

26. *Id.* at 28. Matthaei explains that, "[n]ot only was her work determined by her husband, it was often simply a crude, home-produced version of men's commodity products." *Id.* at 50.



for the family, while the work of the woman, within the home, was intended to save the family money; caring for the children, providing meals, cleaning, sewing, and accomplishing other tasks was a financial savings for the household. While the cost-saving measures were good for the family as a whole, the practice entrapped many women, chaining them to the home.<sup>27</sup>

Adding to a colonial woman's burden was the low value society placed on her work within the home.<sup>28</sup> Yet, social views had little to do with the true value of a woman's work or on the efforts she exerted. Many colonial women worked just as hard as their husbands;<sup>29</sup> nevertheless, the marital relationship was not one of equality. A wife's inferior status within the marital relationship can be attributed to a combination of factors including economic inferiority, role choices, lack of decision-making authority, as well as social norms.

Despite the physical similarities of the labor of men and women in colonial America, the work men conducted garnered a higher social value given its outcome—wealth building: wealth that provided men with power both at home and in society generally.<sup>30</sup> The “process branded woman's home work as primitive, reinforcing the prevailing conception of woman's private work in the household as ‘natural’ . . . and justified man's domination over women . . . .”<sup>31</sup> This notion of male privilege has had a long-lasting influence on women generally and married women in particular.

The economic success of the white colonial woman was tied to the man in her life. If her husband achieved economic success, she

27. *Id.* at 32. Women were tied to the home due to a variety of factors. For example, “[t]he primary aspect of mothering in colonial times was the physical process of carrying and bearing the child.” *Id.* at 38. Because a colonial wife bore an average of eight children, much of her married life was spent either pregnant or nursing a child. *Id.* As such, entry into the labor force was beyond the reach of most married colonial women.

28. *Id.* at 32.

29. For example, the provision of a meal in the colonial period was not a simple process. “Cooking was not a physically easy job, nor was it a delicate one.” MATTHAEI, *supra* note 10, at 42. It “was a crude process . . . without running water, electricity, or refrigeration. Women cooked with brass or copper kettles often holding fifteen gallons of liquid, and the huge iron pots they used weighed alone up to forty pounds each.” *Id.* Women slaughtered animals, cooked and cleaned, managed the home, cared for large numbers of children, and worked long hours daily. *Id.* According to Matthaei:

[T]he impact of work on the social position of the worker has never been determined by the importance of that work to the economy; rather work's social meaning is determined by the constellation of social relationships within which the work takes place. Just as the fact that the slave worked harder than the master did not place the former above the latter, neither did the fact that husband and wife often worked equally hard create, between them, a relationship of equality.

*Id.* at 29.

30. *Id.* at 28.

31. MATTHAEI, *supra* note 10, at 34.



was elevated both economically and socially. If, on the other hand, her husband struggled financially, she as the wife struggled as well.<sup>32</sup> The black colonial woman, on the other hand, had little opportunity for economic success as many black women and men were enslaved during this period.<sup>33</sup>

The development of capitalism brought about great changes for men. Men realized the ability to improve their social standing through increased opportunities to earn wealth regardless of the social status of their parents,<sup>34</sup> whereas women continued to either climb or fall depending on the economic success of her husband.

Although law reform provided women with some property rights beginning in the mid-1800s,<sup>35</sup> according to Evan Roberts ownership did not give women the power to control property, only title to it.<sup>36</sup> Without the power to actually control her property, a married woman remained at the mercy of her husband despite many well intended laws. In fact, there may have been a disincentive for a married woman to enter the paid labor force, despite new laws, given the likelihood that she would have little control over her own property. In addition, "marriage imposed a set of rights and responsibilities on men and

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32. ABRAMOVITZ, *supra* note 14, at 76 (explaining that the "poverty of white women derived largely from their marital status and lack of economic opportunities . . . Adult white women faced poverty if they did not wed, married a poor man, or lost their breadwinner.").

33. *Id.* at 76.

34. MATTHAEI, *supra* note 10, at 104. Matthaei explains:

But as the family economy and slavery broke down, there were increasing opportunities for individuals to earn wealth, regardless of the legacies of their parents; the power of family ties to determine one's economic position gradually declined. The freeing of men from determination by their fathers freed masculine self-seeking from the constraints of lineage and allowed it to emerge as the dynamic motor of the new, capitalist economy.

*Id.*

35. Roberts, *supra* note 23, at 111 ("Until 1857 no states gave women explicit title to their earnings from labor or business.")

36. *Id.* at 108. Roberts maintains:

This distinction between ownership and control persisted through the nineteenth century reforms to married women's property rights. Some acts purported to give wives ownership or title, but not management or control of assets. It is a distinction that may appear odd to economists, in particular, as an operating assumption of many economic analyses is that ownership of assets implies control over their use and sale. In the legal realm the distinction was advocated as a way of giving wives title to assets, but without interfering unduly with her husband's day-to-day authority over the household. More concretely, laws which attempted to separate ownership from control restricted husbands' ability to sell property. Wives had the final say in the continued ownership of assets. However, on a day-to-day basis a husband was presumed to be in charge of managing the asset.

*Id.*

women that were unequal and hierarchical, within the household.”<sup>37</sup> The subordination of a wife to her husband was supported by society, as well as our courts.

The female experience during the development of industrial capitalism in America varied depending on her husband’s economic status, as well as her race. Although the number of children born to a woman in 1900 was dramatically fewer than those born to a woman in 1800 (3.5 compared with an average of 7.04),<sup>38</sup> many women continued to be tied to the home. For example, between 1860 and 1900 a relatively small number of married women, ranging from 4.1 and 4.6 percent, participated in the labor force.<sup>39</sup> For many white women the new focus was on raising the children, not just simply physically producing more children to work to sustain the family.<sup>40</sup>

This period not only restricted the wife to the “domestic sphere,” but also solidified the notion that homemaking was a “social vocation reserved exclusively for woman.”<sup>41</sup> Moreover, “the sexual division of labor became more consistent and clear as men and women gained distinct spheres of work, economy and family respectively.”<sup>42</sup> Hence, the home became the exclusive work sphere for most white women.

Although the percentage of married women in the labor force by 1900 would be considered relatively small by today’s standards (5.6 percent), historians suggest that the number is not insignificant (approximately one million women).<sup>43</sup> Yet the earnings of married women were meager, in fact, they were lower than the earnings of employed children.<sup>44</sup> It is doubtful, however, that wage disparity

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37. Roberts, *supra* note 23, at 116 (“The decision of the Iowa Supreme Court in 1888 summarized marital service as ‘the duty of the wife,’ as a helpmeet, to attend without competition all ordinary household duties, and labor faithfully to advance her husband’s interests.”).

38. MATTHAEI, *supra* note 10, at 169. Matthaei maintains:

One of the clearest expressions of the transformation of mothering to a social process was the decrease in average family size through the nineteenth century. In the course of the nineteenth century, the average number of children per (white) woman fell by half, from 7.04 in 1800 to 3.56 in 1900. The reduction in and control over the number of children she bore was integral to woman’s enlightened practice of her mothering vocation.

*Id.*

39. See Roberts, *supra* note 23, at 100.

40. MATTHAEI, *supra* note 10, at 108.

41. *Id.* at 112.

42. *Id.* at 114–15.

43. Martha Norby Fraundorf, *The Labor Force Participation of Turn-of-the-Century Married Women*, 39 J. ECON. HIST. 401, 401 (1979).

44. *Id.* at 404 (“[A]mong families surveyed in 1901, the average earnings of employed wives were \$128.52, whereas employed children earned an average of \$199.15.”).

was the primary reason why married women during this period were less likely to enter the labor force if they had employable children.<sup>45</sup> In fact, social pressure, traditional views, and the availability of work that could be accomplished within the home may have been the greatest reasons married women remained at home.<sup>46</sup>

Not all women, however, remained outside the labor force. Age, marital status, race, and finances played an important role in the activity of women in the workforce. Not surprisingly, there tended to be a higher rate of employment among single white girls of poor families during this period.<sup>47</sup> These unmarried young women were likely to seek employment to assist their families during their youth.<sup>48</sup> Yet most of these young women were inclined to terminate their employment upon marriage.<sup>49</sup> The employment of young girls did not, however, place them in a position of equality with their male counterparts given the nature of the work available to women at the time.<sup>50</sup> Women typically entered the labor force at a young age as low-level factory workers.<sup>51</sup> Many of these young girls did not personally benefit from their efforts nor did their entry into the labor force provide them with the promise of a better life.<sup>52</sup> The little they did earn was typically given to their parents in order to aid in the survival of the

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45. *Id.* at 405 (“The turn-of-the-century wife seems to have entered the labor force only if the family had no unemployed children of working age at home. Thus, women worked when there were no children or until the children were old enough to enter the labor force.”).

46. *Id.* at 406.

47. See Deborah M. Figart, et al., *Breadwinners and Other Workers: Gender and Race-Ethnicity in the Evolution of the Labor Force*, in *WOMEN AND THE ECONOMY* 39 (Ellen Mutari & Deborah M. Figart, eds., 2003) (explaining that “some of the pioneers in waged work were young, white, single daughters of farm families”).

48. *Id.* at 40.

49. See CLAUDIA GOLDIN, *UNDERSTANDING THE GENDER GAP* 12 (1990) (“For most of our history, women exited the labor force at the time of marriage, rather than with pregnancy, and their exit was, more often than not, final”); see also MATTHAEI, *supra* note 10, at 127. According to Matthaei:

The employment of children, including daughters, in support of their families meant relatively high labor-force participation rate for single women. In 1890, over 40 [percent] of single women were in the labor force, many of them helping their mothers to remain in the home . . . Among women in the working class, the life-work cycle was most often employment in childhood or adolescence, which would be terminated at marriage.

*Id.*; *WOMEN AND THE ECONOMY*, *supra* note 47, at 40 (“A young girl from a family of modest means might spend a few years contributing to her family’s income before she got married.”).

50. *WOMEN AND THE ECONOMY*, *supra* note 47, at 40.

51. *Id.*

52. MATTHAEI, *supra* note 10, at 146–47.

family.<sup>53</sup> In fact, some young girls were put to work to pay for the education and upward mobility of their brothers.<sup>54</sup> Their work did not gain them a career, only support for their parents and siblings.<sup>55</sup> In addition, girls were socialized to pursue marriage as an ultimate goal.<sup>56</sup> Once they were married off they would exit the labor force to become a mother and homemaker.<sup>57</sup>

In the alternative, black women tended to enter the labor force at much higher rates during this period, “even when economic and demographic variables were controlled . . . .”<sup>58</sup> Experts maintain that black wives were more likely to respond to poverty by entering the labor force due, in part, to “[s]lavery and its heritage of racism [which] worked against the establishment of a domestic ideal of womanhood in the black family by excluding the black man from the white conception of manhood. . . .”<sup>59</sup> Thus, unlike white wives, who were more likely to send their young daughters to work rather than work themselves, black married women worked.<sup>60</sup>

Yet, given her limited employment choices and low rate of pay, the black woman’s entry into the workforce did not place her in any better position than the white working girl.<sup>61</sup> Her employment did not create economic security or a position of equality within her

53. *Id.* at 146–47. According to Matthaei:

Family poverty forced girls into the mills where they worked as daughters, sending back their meager pay to aid their families. They were not independent young women seeking their fortunes, but rather poor and burdened daughters . . . . The phenomenon of the working girls did not disappear when factories moved to the cities. An 1880 study of 1,032 *Working Girls of Boston* found that 90 [percent] were unmarried. Interviews of the girls’ families revealed insufficiencies in the fathers’ incomes and the dependence of the families on their daughters’ earnings . . . . [A] 1927 study of *The Young Employed Girl* interviewed 500 of Philadelphia’s 3,867 working girls aged fourteen to sixteen years and visited 263 of their homes. All but ten of these girls turned their entire paychecks over to their families. Of the 263 families interviewed, 209 were in dire need of income—half because of death or illness of parents, the other half because the father’s income was simply insufficient to buy necessities for the family.

*Id.* at 146–47.

54. *Id.* at 149.

55. *Id.* at 146–47, 149.

56. *Id.* at 147–48.

57. GOLDIN, *supra* note 49, at 12.

58. MATTHAEI, *supra* note 10, 134.

59. *Id.* at 134; *see also* WOMEN AND THE ECONOMY, *supra* note 47, at 40–41 (“The dominant (or hegemonic) model of gender relations—based on a male breadwinner and a female, full-time homemaker—never became the norm for African American women;” based, in part, on this heritage of slavery which made it difficult for most African American men to earn enough to support their families.).

60. WOMEN AND THE ECONOMY, *supra* note 47, at 40.

61. GOLDIN, *supra* note 49, at 27.

marital relationship.<sup>62</sup> In fact, given the resentment some black husbands felt as a result of their wives' entry into the labor force,<sup>63</sup> black women may have been placed at greater risk of harm.

The belief that females should be educated gained some acceptance despite its difficult beginnings. The education of women during the nineteenth century was based, in part, on the notion that children would benefit from the education of their mothers and that an educated man would be greatly benefited if his wife was educated as well.<sup>64</sup> As the education of women garnered greater acceptance it became clear, however, that they would not be armed with the tools necessary to compete with men in the labor force.<sup>65</sup> If a woman was fortunate enough to receive education and training, she was steered into areas that were closely connected to the role of mother and homemaker, such as teacher or nurse, and later social worker or librarian, all of which were accepted as inherently female careers.<sup>66</sup>

This early "sex-typing" of jobs, those careers inherently considered female (teaching, nursing, clerical, and social work) and those considered male (the law, medicine, management, and sales), influenced the career path of women, their social status, and their economic circumstances.<sup>67</sup> Not surprisingly, jobs that were considered inherently female were lower status and lower pay than those considered inherently male.<sup>68</sup> For the most part, women were precluded from obtaining male jobs.<sup>69</sup>

Equally problematic for women in the nineteenth century was their lack of property rights. Even if a married woman was able to obtain a job, she had no legal claim to the wages she earned.<sup>70</sup> A woman's husband was free to take her wages and use them as he saw fit.<sup>71</sup> The law was a valuable tool for men who were inclined to

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62. MATTHAEI, *supra* note 10, at 136.

63. *Id.* at 136. Although Matthaei does not consider the issue from an "at risk" or intimate partner violence perspective, she does provide important insight into both the black woman's employment experience and her husband's reaction to it. Matthaei theorizes that "[h]er efforts to help her husband and family were . . . resented as depriving her husband of his manhood, his ability to provide. Slavery and racism have prevented many black men from achieving masculinity and encouraged black women to share man's role. Yet this has not meant liberation of the sexes, but rather anger, mistrust, and a weakened marital bond."

64. *Id.* at 178–79.

65. *Id.* at 187–88.

66. *Id.* at 179, 183.

67. For examples of sex-typed jobs in 1900, see *id.* at 190–91.

68. MATTHAEI, *supra* note 10, at 192; Desirae M. Domenico & Karen H. Jones, *Career Aspirations of Women in the 20th Century*, 22 J. CAREER & TECHNICAL EDUC. 18, 18 (2006).

69. MATTHAEI, *supra* note 10, at 192.

70. See Roberts, *supra* note 23, at 108.

71. *Id.*

dominate their wives. The ability of a husband to take possession of his wife's livelihood also provided him with the power to control her actions. Thus, a husband had the power to control and restrict his wife through the power of the purse.

Although women were eventually granted property rights, their role in the labor force in the 1900s was mixed.<sup>72</sup> Due to economic necessity caused by the Great Depression and the needs of our country as a result of war, more and more married women entered the labor force.<sup>73</sup> Yet husbands continued to resist the employment of their wives, and as a product of their environment, wives resisted as well.<sup>74</sup> Some husbands openly declared that they would rather have their family live in abject poverty than allow their wives to work.<sup>75</sup> Notwithstanding this resistance, “[b]etween 1890 and 1920, women’s participation in the paid professions increased by 226 [percent].”<sup>76</sup>

Not surprisingly, for many women marriage and employment were incompatible,<sup>77</sup> confirming that marriage continued to negatively influence the employment of women. In fact, marital status was one of the best predictors of whether a woman was a member of the labor force.<sup>78</sup> If she was unmarried it was more likely that she worked for pay, if she was married it was more likely she did not.<sup>79</sup>

The numerical increase in the participation of women in the paid labor force in the twentieth century was significant.<sup>80</sup> But numbers alone provide limited information about paid female workers. From the turn of the century through 1940 our country witnessed significant increases in the rate of working married women.<sup>81</sup> One

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72. *Id.* at 100.

73. GOLDIN, *supra* note 49, at 10.

74. Comments by Alicia Kelly, *Faculty Workshop: Works in Progress* held at Widener University School of Law (Feb. 21, 2013).

75. MATTHAEI, *supra* note 10, at 249. Explaining that:

A study of unemployed men during the 1930s found them (1) emotionally devastated over the loss of their provider role and (2) adamantly opposed to the employment of their wives. “I would rather starve than let my wife work,” and “I would rather turn on the gas and put an end to the whole family than let my wife support me.” These cases show how much a man’s masculinity was bound up with his ability to provide for the family.

*Id.*

76. *Id.* at 257.

77. See WOMEN AND THE ECONOMY, *supra* note 47, at 40 (explaining that both cultural norms, as well as employer policies to fire their female employees upon marriage contributed to this “cult of domesticity”).

78. See *id.* at 40. See also MATTHAEI, *supra* note 10, at 120–21.

79. See MATTHAEI, *supra* note 10, at 262–63, 271.

80. See *id.* at 257.

81. See James P. Smith & Michael P. Ward, *Time-Series Growth in the Female Labor Force*, 3 J. LABOR ECON. S59, S59 (1985) (maintaining that during the first forty years of the 21st century “participation rates for married white women increased fivefold”).

factor accounting for the growth generally related to education.<sup>82</sup> Although the least educated women were the most likely to work prior to the turn of the century, increased education had a positive correlation with the participation of women in paid labor in the twentieth century.<sup>83</sup> For example, high school educated women were more likely to obtain clerical jobs which required particularized skills.<sup>84</sup> In fact, by the early 1900s it was typical for a young woman to obtain a high school education,<sup>85</sup> and by the 1940s college was possible for some women, particularly for those from middle-class families.<sup>86</sup> Yet, during this period clerical work was the standard occupation for a large majority of female workers.<sup>87</sup>

Some researchers point out the benefits of clerical work for married women, in particular, because a mother could more easily leave and re-enter a clerical job with fewer negative consequences.<sup>88</sup> This may be true to the extent that there was little mobility for individuals employed in clerical positions. Nevertheless, these positions were inferior to “male jobs” which provided opportunity for advancement. Indeed, women could find positions as clerical employees during this period.<sup>89</sup> These jobs were in large supply and they were the catalyst for increasing the female labor force.<sup>90</sup> A mother had the flexibility to leave a clerical job to stay home with a young child and return to a similar job with minimal, if any, loss of status or pay grade.<sup>91</sup> This suggests, however, that had that same mother remained at her job and not stayed home to care for her young children, she would have experienced little advancement during that period of employment.

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82. *Id.* at S70.

83. *Id.*

84. Kim England & Kate Boyer, *Women's Work: The Feminization and Shifting Meanings of Clerical Work*, 43 *J. SOCIAL HIST.* 307, 313 (2009).

85. Smith & Ward, *supra* note 81, at S76. Smith and Ward explain:

Between the 1981 and 1921 birth years, universal high school attendance became the norm. Not only did schooling increase rapidly over this period, but, with the development of the high school, the character of women's schooling was altered, with the learning acquired presumably more useful in the labor market.

*Id.*

86. MATTHAEI, *supra* note 10, at 262. Mattaei provides:

By 1940, a survey of the middle-class readers of *Woman's Home Companion* found that although all but one saw marriage as their ultimate career goal, 75 percent of the high school girls wished to go to college, and 98 percent wished to pursue a brief business or professional career before they married.

*Id.*

87. See Smith & Ward, *supra* note 81, at S78.

88. *Id.*

89. See, e.g., England & Boyer, *supra* note 84, at 312.

90. *Id.*

91. See Smith & Ward, *supra* note 81, at S78.



In the twenty years following 1950, a rapid growth in the labor force participation of women resulted in a fifty percent increase in female workers.<sup>92</sup> Employment, however, continued to be a short-term experience, ending when a woman married.<sup>93</sup> Marriage was expected and employment was not necessarily acceptable after marriage.<sup>94</sup> Of all the factors to be considered, some researchers suggest that “only material status matters” when assessing female participation in the labor force, with marriage acting as a “depressant.”<sup>95</sup>

In addition, job sex-typing dominated through the 1960s, keeping females who did work in a compromised economic position.<sup>96</sup> Women held lower status jobs, typically in a supporting role to male employees.<sup>97</sup> They worked as secretaries and in clerical positions. In fact, “by 1960 almost one of every three employed women worked in clerical jobs as opposed to one in a hundred in 1870.”<sup>98</sup> Additionally, more women worked in manufacturing in the 1960s than in any other industry.<sup>99</sup> These low-level jobs were similar to the clerical positions of the early 1900s, providing little room for promotion or advancement.<sup>100</sup> Simply put, working women played a supportive role to men and male-run businesses.<sup>101</sup>

The 1970s and 1980s provided women with greater opportunities for advancement.<sup>102</sup> Indeed, during this period much progress was made in integrating women into many occupational fields.<sup>103</sup> Yet during this period women continued to earn less than their male counterparts.<sup>104</sup> According to Claudia Goldin, “in the 1970’s, the 59 cents on the dollar figure became synonymous with inequality between men and women in the labor market. It symbolized the failure

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92. *See id.* at S59.

93. Desirae M. Domenico & Karen H. Jones, *Career Aspirations of Women in the 20th Century*, 22 J. CAREER & TECHNICAL EDUC. 18, 19 (2007).

94. *Id.*

95. *See* Smith & Ward, *supra* note 81, at S81.

96. MATTHAEI, *supra* note 10, at 197.

97. *See id.* at 208–09.

98. *Id.* at 282.

99. *See* BUREAU OF LABOR STATISTICS, *Spotlight on Statistics: Women at Work* (Mar. 2011), <http://www.bls.gov/spotlight/2011/women/> [hereinafter *Women at Work*].

100. SHARON L. HARLAN & CATHERINE WHITE BERHEIDE, CTR. FOR WOMEN IN GOV'T, BARRIERS TO WORK PLACE ADVANCEMENT EXPERIENCED BY WOMEN IN LOW-PAYING OCCUPATIONS 4 (1994).

101. *See* MATTHAEI, *supra* note 10, at 207–09, 222–23.

102. *See* ARIANE HEGEWISCH ET AL., INST. FOR WOMEN'S POLICY RESEARCH, SEPARATE AND NOT EQUAL? GENDER SEGREGATION IN THE LABOR MARKET AND THE GENDER WAGE GAP 1 (2010).

103. *Id.*

104. GOLDIN, *supra* note 49, at 83.

of the marketplace to ensure equal treatment and became a banner for the women's movement."<sup>105</sup>

By 1979, the female-to-male earnings ratio had moved very little—holding at an unsatisfactory sixty-two percent.<sup>106</sup> The reduced earning capacity of women during this period was due, in part, to the lower educational attainment of women.<sup>107</sup> For example, in 1970 only eleven percent of women held a college degree.<sup>108</sup> By 1980 the number jumped to 18.7 percent.<sup>109</sup> Although early wage disparity between the sexes could be justified, at least in part, by taking into account the youth and inexperience of some female workers,<sup>110</sup> it is difficult to understand how wage differences continued to exist over time in the face of advancements in education, as well as the experience women gained on the job over time.<sup>111</sup> One explanation for “wage discrimination” is rooted in the continuing discrimination of women based on their gender alone.<sup>112</sup> Compounding the problem is the long-lasting influence of the early sex-typing in the labor force and the socialization of both girls and boys beginning at an early age.<sup>113</sup>

105. *Id.* at 83.

106. See BUREAU OF LABOR STATISTICS, *Women's-to-Men's Earnings Ratio by Age* (July 2010), [http://www.bls.gov/opub/ted/2010/ted\\_20100708.htm](http://www.bls.gov/opub/ted/2010/ted_20100708.htm); see also STEVEN GREENHOUSE, *THE BIG SQUEEZE* 39 (2008) (suggesting similar statistics on wage disparity during this period).

107. BUREAU OF LABOR STATISTICS, *Educational Attainment of Women in the Labor Force, 1970–2010* (Dec. 2011), [http://www.bls.gov/opub/ted/2011/ted\\_20111229.htm](http://www.bls.gov/opub/ted/2011/ted_20111229.htm).

108. *Id.*

109. *Id.*

110. *But see* GOLDIN, *supra* note 49, at 92 (questioning whether wage disparity around the turn of the century was due to age and inexperience of female workers or due to “wage discrimination”).

111. In fact, some argue that wage discrimination increased as the education and job experience of women increased. GOLDIN, *supra* note 49, at 83.

112. See GOLDIN, *supra* note 49, at 88. Goldin explains:

The measure of “wage discrimination” and the word “discrimination” are not necessarily the same concepts. By discrimination or prejudice, we often mean a distaste for associating with another person because of some characteristic unrelated to intrinsic aspects of productivity. Alternatively, discrimination can occur because an individual is part of a group—say, all women or all blacks—having average characteristics that differ from those of another group—say, all men or all whites. . . . [This is] generally termed “taste discrimination.” . . . [the other] [i]s called “statistical discrimination” . . . [I]n statistical discrimination, for example, the groups need not differ by characteristics related to productivity. They may, however, differ by the ability of others to infer productivity from an attribute such as education [citation omitted]. The groups, if they do differ in ability or education or skill, need not differ by much, but small initial differences can, through feedback effects, lead to large differences over time.

*Id.*

113. See *id.* at 90.

A woman who attempted to obtain employment for a position which was traditionally seen as “male” faced many difficulties.<sup>114</sup> In addition, the view that a woman should or could support herself financially was not widespread.<sup>115</sup> Culturally, men were still seen as the breadwinners and women as the caretakers.<sup>116</sup> These social norms equated to real dollars for working wives who continued to earn less than their working husbands.<sup>117</sup> In fact, according to the Bureau of Labor Statistics, by 1987 only eighteen percent of working wives earned more than their working husbands<sup>118</sup>. Given social norms and the reality that working wives continued to earn less than their husbands, many married women persisted in leaving the labor force upon the birth of a child.<sup>119</sup> Although having one spouse remain home provided benefits, the decision placed women in a vulnerable position.<sup>120</sup>

Studies suggest that married women during this period were “trapped in a ‘low wage’ cycle.”<sup>121</sup> Researchers James Long and Ethel Jones explain that in the 1970s married women’s wages tended to be low given their lack of experience compared to “men and their low current earning capacity reduce[d] the probability of entering the labor force in the future, which in turn reduced their expected future wages.”<sup>122</sup> This “low wage cycle” may accurately characterize the plight of many stay-at-home wives, in particular those in abusive relationships.<sup>123</sup>

Some might argue that women’s experiences are very different today, that women generally have an equal opportunity to support themselves financially. Yet, research suggests that although there were some advancements both in the integration of women into the workforce and some narrowing of the wage gap during the 1970s and 1980s, little to no progress has been made since the mid-1990s.<sup>124</sup>

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114. See MATTHAEI, *supra* note 10, at 287–88.

115. See *id.* at 279.

116. See WOMEN AND THE ECONOMY, *supra* note 47, at 40.

117. See *id.* at 155–57.

118. See BUREAU OF LABOR STATISTICS, *Wives Who Earn More than Their Husbands*, 1987–2011 (Jan. 2009) [http://www.bls.gov/cps/wives\\_earn\\_more.xls](http://www.bls.gov/cps/wives_earn_more.xls).

119. See Annemette Sorensen, *Women’s Employment Patterns After Marriage*, 45 J. MARRIAGE & FAM. 311, 316 (1983).

120. See James E. Long & Ethel B. Jones, *Labor Force Entry and Exit by Married Women: A Longitudinal Analysis*, 62 REV. ECON & STAT. 1, 6 (1980).

121. *Id.*

122. *Id.*

123. Donna Coker, *Addressing Domestic Violence Through a Strategy of Economic Rights*, 24 WOMEN’S RTS. L. REP. 187, 188 (2003).

124. Hegewisch, *supra* note 102, at 1.

Accordingly, women today continue to have diminished opportunities and limited choices.<sup>125</sup> Not only do they earn less than their male counterparts in the paid labor force, our history of job sex-typing continues to reduce the employment opportunities of female workers.<sup>126</sup> Moreover, women generally represent a much larger percentage of the poor, the homeless, and the abused.<sup>127</sup>

Sex-typing, wage disparity, gender bias, socialization, marriage, and children significantly influence the ability of women generally to prosper in the labor force.<sup>128</sup> With a basic understanding of the economic implications of these challenges we now turn to the “piling on” effect of intimate partner violence when added to the preceding economic factors.

## II. THE ECONOMICS OF INTIMATE PARTNER VIOLENCE: THE POWER TO CONTROL

*Inadequate material resources render women more vulnerable to violence. Inadequate material resources increase the batterers' access to women who do try to separate. Inadequate material resources are a primary reason why women do not try to separate . . . [T]hose women who are economically vulnerable have an increased vulnerability to violence. So you see this kind of interactive effect.*<sup>129</sup>

For survivors of intimate partner violence, there are a number of barriers that dramatically decrease the likelihood of freeing oneself from the cycle of abuse and remaining safely away from an abusive partner.<sup>130</sup> These factors include, but are not limited to, risk of harm, social factors, law enforcement response, system's response, economic dependence, homelessness, and poverty.<sup>131</sup> The latter three factors fall into the broader category of financial impediments to freedom from abuse.<sup>132</sup>

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125. *Id.* at 1–2.

126. For a detailed discussion of the current state of labor equality for women, see *infra* Part IV.B.

127. *Introduction to the Challenges for Achieving Gender Equality*, GLOBAL POVERTY PROJECT (May 2, 2013), <http://www.globalcitizen.org/Content/Content.aspx?id=058f8fee-01f4-4508-a54d-464ff22a4716>.

128. See GOLDIN, *supra* note 49, at 159.

129. Coker, *supra* note 123, at 188.

130. *Id.*

131. *Id.* at 187–88.

132. *Id.* at 188.

Financial impediments play a major role in restricting a woman who experiences intimate partner violence from initially gaining freedom from the abusive relationship.<sup>133</sup> Moreover, financial instability is one of the greatest reasons why, after gaining freedom, a woman has limited choices and may ultimately acquiesce to an abuser's attempts at reconciliation.<sup>134</sup> Advocates agree that for many women it comes down to a choice between ensuring resources for their children and freedom from abuse.<sup>135</sup> The choice is clear for many women—feed, house, and clothe the children, even if it compromises her safety.<sup>136</sup>

Unlike stranger violence, batterers are able to successfully establish and maintain a long-term relationship with their partners due to both entrapment and control.<sup>137</sup> Although the source of the batterer's success at drawing in and maintaining control over his intimate partner remains unsettled, it is generally accepted that batterers create an emotional connection with their victim, as well as use a variety of tactics to entrap her. Although all abusive relationships are unique, a batterer's behavior typically cycles through various stages.<sup>138</sup> For example, the "cycle of violence" has been used to describe these patterns of behavior.<sup>139</sup> The cycle of violence model suggests that the violent relationships follow a three stage pattern: (1) tension building, (2) explosion, and (3) the honeymoon phase.<sup>140</sup>

Although not all abusive relationships follow a precise cycle, batterers use varying degrees of abusive and loving tactics to terrorize and entrap their partner.<sup>141</sup> An individual whose power rests solely on physical acts of abuse and intimidation will likely have little success maintaining a lasting relationship with his intimate partner.<sup>142</sup> Often, there are additional links that tie a woman to her abusive partner and draw her back again and again should she break free.<sup>143</sup>

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133. *Id.*

134. See Ashley Lowe & Sarah R. Prout, *Economic Justice in Domestic Violence Litigation*, 90 MICH. BAR J. 32, 33 (2011).

135. *Id.*

136. *Id.* (explaining that many battered women remain in the abusive relationship in order to provide food and shelter for their children).

137. *Id.* at 32–33.

138. See, e.g., *Dating Violence 101*, BREAK THE CYCLE, <http://www.breakthecycle.org/dating-violence-101?gclid=CMDYq-vCwbECFQhN4AodI2EAHg> (last visited Jan. 10, 2014).

139. *Id.*

140. *Id.*

141. *Tactics of Abusive Men*, CRISIS CONNECTION, [http://www.crisisconnectioninc.org/domesticviolence/tactics\\_of\\_abusive\\_men.htm](http://www.crisisconnectioninc.org/domesticviolence/tactics_of_abusive_men.htm) (last visited Jan. 10, 2014).

142. Lowe & Prout, *supra* note 134, at 32–33.

143. *Id.*

Having children in common connects two individuals for the long-term. Yet, having a child in common alone does not guarantee the continuation of the intimate relationship. In contrast, economic insecurity creates lasting dependence, enabling the abuser to draw his partner into the abusive relationship over and over again.

While financial dependence entraps a woman who is abused, other forms of economic abuse provide the batterer with added power to control her actions.<sup>144</sup> The economic dependence of the victim enables the batterer to hold his hostage indefinitely.<sup>145</sup> Hostage taking, however, is only part of the problem. Once trapped, the perpetrator is able to control his partner through a variety of abusive tactics.<sup>146</sup> Batterers threaten, intimidate, use physical force, engage in sexual violence, and psychologically abuse.<sup>147</sup> Hence, abuse and money are intensely interconnected. The examples are unlimited: control over money is used as a tool to commit other acts of abuse, control over money is used to hold the victim hostage, abuse takes the form of money control, and so much more.

Money, power, and domestic violence intersect in a variety of ways.<sup>148</sup> Economics may influence the batterer's personality characteristics, guarantee the formation of the abusive relationship, fuel the batterer's power, or take the form of specific acts of abuse.<sup>149</sup> For some abusers financial control is accomplished through a calculated process of seeking out and nurturing a relationship with an individual of compromised means.<sup>150</sup> Other abusers spend years restricting their partner's access to education, employment, training, contacts, and resources, thereby limiting her ability to secure financial freedom once the abuse begins.<sup>151</sup>

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144. *Id.*

145. Lowe & Prout, *supra* note 134, at 32–33.

146. *Id.*

147. *Tactics of Abusive Men*, *supra* note 141.

148. *Id.*

149. *Id.*

150. *Id.*

151. CYNTHIA K. SANDERS, DOMESTIC VIOLENCE, ECONOMIC ABUSE, AND IMPLICATIONS OF A PROGRAM FOR BUILDING ECONOMIC RESOURCES FOR LOW-INCOME WOMEN: FINDINGS FROM INTERVIEWS WITH PARTICIPANTS IN A WOMEN'S ECONOMIC ACTION PROGRAM 36 (2007), available at <http://csd.wustl.edu/Publications/Documents/RP07-12.pdf>. Sanders explained that one of the themes to emerge from her survey of battered women was:

the prevention or disruption of employment and education by [abusive] partners. In some cases partners simply prohibited and threatened violence if women expressed a desire to work or gain further education. In other cases partners used tactics to disrupt employment or education. Tactics included initiating conflict just before women were leaving for a job interview or class, calling and harassing women at work or showing up at school or place of employment and causing a scene; in some cases causing women to lose their

### A. Targeting

*Batterers often use the political and economic vulnerability of women to reinforce their power and dominance over particular women . . . . Batterers also take advantage of the vulnerabilities of their victims, such as the victim's economic dependence on the batterer or on the state, her status as an illegal immigrant, her alcohol or drug dependency, or her responsibility to provide and care for children.*<sup>152</sup>

Although it is generally accepted that women of all socioeconomic groups are at risk of experiencing domestic violence,<sup>153</sup> batterers can be calculating when it comes to victimization.<sup>154</sup> Particularized qualities may make a potential victim more appealing or less tempting to a batterer, economic instability representing one of the more appealing qualities.<sup>155</sup> Targeting an individual of limited finances is therefore ideal for a batterer because it creates the ultimate dependent relationship.<sup>156</sup> Moreover, women in poverty experience multiple vulnerabilities, which have a causal relationship with economic hardship such as single-parenthood, homelessness, diminished social capital, compromised immigration status, and language barriers.<sup>157</sup> One or several hardships coupled with economic insecurity makes women in poverty ideal targets for perpetrators of intimate partner violence.<sup>158</sup>

An individual with few resources is likely to more freely rely on an intimate partner for her needs, as well as the needs of her children.<sup>159</sup> Not only will an individual of limited financial means more readily become dependent upon an abuser, it is also likely that she will face greater challenges in her attempts to end the violent relationship once she becomes intimately involved with an abuser.<sup>160</sup> In

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jobs. Such tactics interfered with women's efforts to advance their economic well-being and stability.

*Id.*

152. SCHNEIDER, *supra* note 3, at 12 (quoting Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1, 39–40 (1999)).

153. J. Michael Collins & Collin O'Rourke, FAM. FIN. EDUC., *Financial Capability and Domestic Violence*, at 1, Feb. 2012, available at <http://fyi.uwex.edu/financialseries/files/2012/02/Financial-Capability-and-Domestic-Violence.pdf>.

154. See SCHNEIDER, *supra* note 3, at 12.

155. *Id.*

156. See Coker, *supra* note 123, at 188 (“Some battering men appear to seek out women that are economically vulnerable . . .”).

157. *Id.* at 187.

158. *Id.* at 187–88.

159. See Lowe & Prout, *supra* note 134, at 33.

160. *Id.* at 32.



fact, she may even be reluctant to try to terminate the relationship once the abuse begins given the limited options available to her.<sup>161</sup>

Economic instability, however, does not translate to weaknesses on the part of a woman who is abused. It is a common misconception that women who are battered are weak individuals who possess personality flaws placing them at greater risk.<sup>162</sup> To the contrary, domestic violence experts generally agree that women in violent relationships are often strong survivors.<sup>163</sup> In fact, both flaws with our legal system and the acts of batterers perpetuate intimate partner violence, not battered women.<sup>164</sup> Armed with proper resources, a “would be victim” is less appealing to a batterer whose power to control is greatly diminished by the economic stability of his partner.<sup>165</sup> Yet, ensuring economic stability for women is a difficult task given the complex nature of the female labor force experience,<sup>166</sup> the flaws in our current legal system,<sup>167</sup> gender norms,<sup>168</sup> and the lack of government resources available generally.<sup>169</sup>

### B. Entrapment

*In domestic captivity, physical barriers to escape are rare. In most homes, even the most oppressive, there are no bars on the windows, no barbed wire fences. Women and children are not ordinarily chained, though even this occurs more often than one might think. The barriers to escape are generally invisible. They are nonetheless extremely powerful.*<sup>170</sup>

Entrapment is another way an abuser uses economics to ensure power over his victim.<sup>171</sup> The ability of the abuser to prevent his victim from acquiring resources, another category of economic abuse, is an

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161. *Id.* at 33.

162. *Violence and Domestic Abuse-Myths and Facts*, THE WOMEN'S CTR., <http://www.thewomenscenter.org/content.asp?contentid=537> (last visited Jan. 10, 2014).

163. See EDWARD W. GONDOLF & ELLEN R. FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS 18 (1988).

164. *Id.* at 11–25 (arguing that sources of help are not readily available to battered women, entrapping them in violent relationships).

165. See Lowe & Prout, *supra* note 134, at 34.

166. See *supra* Part I.

167. See *infra* Part III.

168. See SCHNEIDER, *supra* note 3, at 12 (quoting Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1, 39–41 (1999)).

169. See Coker, *supra* note 123, at 188.

170. JUDITH LEWIS HERMAN, TRAUMA AND RECOVERY 74 (1992).

171. See STARK, *supra* note 1, at 129.

effective way to maintain long-term control.<sup>172</sup> Abusers use a multitude of tactics to compromise the victim's employment or education status, guaranteeing the battered woman's dependence upon him.<sup>173</sup>

The findings from one survey of a group of women from abusive relationships support the notion that a batterer's control over family finances strengthens his power to control.<sup>174</sup> Although the responses to the survey varied, it is clear that economic instability "played a major role" in the women's struggle to achieve freedom from the abusive relationship.<sup>175</sup> For example, one respondent explained that without financial security it is difficult to leave an abusive relationship, particularly when there are children involved.<sup>176</sup>

Some batterers contact their partner at her job, cause her to be late for or miss work, or use other abusive tactics to interfere with her employment status.<sup>177</sup> For example, three survey participants provided similar examples of the tactics used by the abusers to cause problems with her employment.<sup>178</sup> One survey participant explained that her abuser would come to her workplace and use profanity in an attempt to embarrass her; another claimed that her abuser would call and harass her on the job resulting in the termination of her employment; while another maintained that her abuser "would come to my work . . . and start trouble. Cussing and screaming and throwing a hissy fit . . ." <sup>179</sup> A second survey participant also explained that

172. See Coker, *supra* note 123, at 196.

173. See, e.g., Lowe & Prout, *supra* note 134, at 32–33. Explaining:

It is common for batterers to insist that a survivor quit working to continue the batterer's campaign of physical and financial isolation. It is also common for a batterer to sabotage efforts at maintaining employment before and after separation as outside interests and sources of income threaten a batterer's control over his partner. This fulfills the batterer's short-term and long-term goals, forcing his spouse to focus solely on his needs. Additionally, this behavior further helps establish long-term dependence on the relationship by sabotaging the survivor's ability to earn a paycheck.

*Id.*; see also Coker, *supra* note 123, at 188 ("Abusive men cause women to lose jobs, educational opportunities, careers, homes, savings, their health, their ability to enter the workplace.").

174. SANDERS, *supra* note 151, at 42. Explaining that:

Women's access to financial resources were often restricted, monitored, or completely controlled by an abusive partner. Financial issues were routinely an impetus to other forms of abuse including physical, sexual, and verbal. Women often felt unable to leave abusive partners due to economic dependence, especially when they had children to care for.

*Id.*

175. *Id.* at 34.

176. *Id.* ("A lot of times it's [economic dependence] why we stay is because there's no way out. With four kids . . . I love my kids . . . where would I take them? I'm not gonna live in a car. Where am I gonna go? . . . They got to be able to go to school . . .").

177. See Lowe & Prout, *supra* note 134, at 32.

178. SANDERS, *supra* note 151, at 34, 37.

179. *Id.* at 37.

she was only permitted to work when it benefitted her abuser: “[I]f he was in between jobs and we needed money,” she was permitted to work.<sup>180</sup>

According to Linda Brush, “[w]ork is a particularly important site for contesting the vulnerability of women to men’s abuse . . . Interfering with women’s work and education is a specific tactic abusers use to exploit and control women.”<sup>181</sup> By interfering with his partner’s labor force participation, a perpetrator succeeds in diminishing his partner’s chances of financial independence.<sup>182</sup> The damage to work history that follows these acts of labor-force-abuse causes long-lasting negative implications for women that follow them throughout their careers.<sup>183</sup>

### C. Abuse

*Individual men’s establishing coercive control over their wives and girlfriends is not rooted in anything natural about masculinity, but is backed by political, economic, and social inequalities.*<sup>184</sup>

Economic abuse is one of several strategies used by the batterer to gain control over his partner, yet it is a form of domestic violence that is very different from physical abuse or threats of harm.<sup>185</sup> This type of abuse presents significant challenges for survivors who seek legal protections because the perpetrator’s acts seldom fall neatly into an enumerated category of abuse as defined by law.<sup>186</sup>

#### 1. Resource Control

*To make contemporary women their personal property, the modern man must effectively stand against the tide of history, degrading women into a position of subservience that the progress of civilization has made obsolete. But he must do even more . . . . [T]he technology of control men devise must be equally expansive in time and social space,*

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180. *Id.*

181. LISA BRUSH, POVERTY, BATTERED WOMEN, AND WORK IN U.S. PUBLIC POLICY 32 (2011).

182. *Id.* at 31–32.

183. See SANDERS, *supra* note 151, at 36–37.

184. See BRUSH, *supra* note 181, at 32.

185. See SANDERS, *supra* note 151, at 31.

186. See BRUSH, *supra* note 181, at 32.

*reaching into the economic, political, and social realms to which women's freedoms have given them access . . .*<sup>187</sup>

Batterers who use resource control to abuse and ultimately control their intimate partners may employ several strategies to accomplish their goals.<sup>188</sup> Legal scholars suggest that preventing an intimate partner from “acquiring” and “using” resources are two forms of economic abuse.<sup>189</sup>

The legal system's recognition of economic abuse, however, has been mixed.<sup>190</sup> Given our tendency to focus on specific acts of physical abuse or threats of harm, as opposed to a course of conduct, it has been difficult for individuals seeking protection to establish that acts of economic abuse justify the entry of a civil protection order.<sup>191</sup>

Resource control is one of the many ways in which money and domestic violence connect.<sup>192</sup> Male entitlement of female property is rooted in early American history,<sup>193</sup> and although laws have long been established to ensure the property rights of women, male domination over money and possessions continues to fuel intimate partner violence.<sup>194</sup> Marriage is the batterer's gateway to establishing power over the family finances and property.<sup>195</sup> Although unmarried perpetrators strive to control household resources, marriage is the ideal environment for growing this power.<sup>196</sup> Joint bank accounts, property titled solely in the husband's name, and limits on the victim's access to financial information are just some of the trouble areas.<sup>197</sup> In addition, when marriage is involved it may appear to the objective observer that control of the assets was freely given to an abusive spouse, making it very difficult for the abused partner to subsequently prove financial wrongdoing.

A batterer's use of resource control can take many forms.<sup>198</sup> Limiting a spouse's access to money or property generally are

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187. STARK, *supra* note 1, at 197.

188. See Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, 83 N.Y. St. B.J. 40 (2011).

189. *Id.* at 41.

190. See Coker, *supra* note 123, at 189–90; Pollet, *supra* note 188, at 42.

191. The protections afforded via civil protection orders are explored *infra* Part III.

192. See Pollet, *supra* note 188, at 40.

193. Part I of this Article considers a husband's authority to control the property of his wife. See *supra* Part I.

194. See Pollet, *supra* note 188, at 41.

195. See SANDERS, *supra* note 151, at 30–31.

196. *Id.* at 32.

197. *Id.* at 31.

198. *Id.* at 30.

obvious examples.<sup>199</sup> This form of abuse can be expressed at the most basic level. Controlling the amount and type of food that the victim or child is permitted to eat on a daily or weekly basis is one example.<sup>200</sup> Some abusers nearly starve their victims or excessively restrict the nutritional content their family is allowed to consume while others limit the amount of money or resources to which their partner has access.<sup>201</sup> The maltreated spouse may be given an exceedingly limited amount of money upon which she is expected to feed her family, ultimately setting her up for failure, which the perpetrator will later use to justify other abusive measures.<sup>202</sup> Such failure may also accomplish the abuser's dual goal—to abuse his partner and to compromise her relationship with the children.<sup>203</sup>

Restricting a partner's use of specific possessions is another way the batterer can maintain power over his victim through control of the property.<sup>204</sup> A batterer who removes the car battery or takes the car keys with him as he leaves the home on his way to work each day restricts his partner's mobility, denies her freedom of association, and compromises her safety.<sup>205</sup> Likewise, disabling the home phone or forbidding the use of a cell phone has similar outcomes.<sup>206</sup>

Moreover, a perpetrator may take retaliatory action if he is arrested or otherwise removed from the home due to his acts of domestic violence.<sup>207</sup> His actions may take many forms to abuse and control his victim beyond physical acts of violence or threats of

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199. *Id.* at 30–31.

200. See NAT'L COALITION AGAINST DOMESTIC VIOLENCE, *Economic Abuse*, [http://www.uncfsp.org/projects/userfiles/File/DCE-STOP\\_NOW/NCADV\\_Economic\\_Abuse\\_Fact\\_Sheet.pdf](http://www.uncfsp.org/projects/userfiles/File/DCE-STOP_NOW/NCADV_Economic_Abuse_Fact_Sheet.pdf) (last visited Jan. 10, 2014).

201. See, e.g., Cathy Hayes, *Husband Found Guilty of Horrific Spousal Abuse*, IRISH CENTRAL (July 13, 2012), <http://www.irishcentral.com/news/-Husband-found-guilty-of-horrific-spousal-abuse---wife-found-gravely-ill-starved-blind--VIDEO-162336846.html>.

202. See SANDERS, *supra* note 151, at 33.

203. Experts in the area of intimate partner violence agree that perpetrators seek to direct the child's perception of and relationship with the abused parent. See LUNDY BANCROFT & JAY G. SILVERMAN, *THE BATTERER AS PARENT* 69 (2002). Bancroft and Silverman explain:

[T]he typical ability of men who batter to shape the children's views of both parents and to condition children to misinterpret the abuse that they observe in a way that leads them to blame their mother and to minimize the abuse. One study, for example, found that exposure to domestic violence affected children's views of their mother more negatively than it did their views of their father.

*Id.*

204. See SANDERS, *supra* note 151, at 39–40.

205. *Id.* at 40.

206. See CANADIAN RESOURCE CTR. FOR VICTIMS OF CRIME, *Spousal Abuse*, available at <http://crcvc.ca/docs/spousalabuse.pdf> (last visited Jan. 10, 2014).

207. See SCHNEIDER, *supra* note 3, at 184–85.

harm.<sup>208</sup> He may choose to freeze or liquidate a joint bank account,<sup>209</sup> close joint credit card accounts, stop payments on the mortgage or rent,<sup>210</sup> refuse to pay the utility bill, terminate utility service to the residence,<sup>211</sup> shut off the phone, or refuse to pay the day care bill.<sup>212</sup> As a result, the victim is literally left out in the cold. Homelessness, poverty, and hunger lead to one option for many a survivor of domestic violence—reunification with the abusive partner.<sup>213</sup>

Limited access to financial assets is particularly dangerous because it limits an individual's ability to free herself from a violent relationship or remain safely away once she takes measures to end the relationship.<sup>214</sup> Without money, it is exceedingly difficult to physically leave the abusive home, pay a security deposit for another residence, find and maintain employment, or feed herself and her dependents.<sup>215</sup>

## 2. *Exploitation*

Another category of economic abuse identified by domestic violence scholars is the exploitation of the victim's resources.<sup>216</sup> Although exploitation and resource control are interconnected, there are subtle differences between the two forms of economic abuse.<sup>217</sup> Exploitation takes many forms: liquidating the bank accounts, charging items on the victim's credit card, and taking, damaging, or destroying the

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208. See SANDERS, *supra* note 151, at 30.

209. For many survivors, careful financial planning prior to termination of the abusive relationship and/or application for a civil protection order is critical to ensuring that the batterer does not have the opportunity to take financial retaliatory measures. The liquidation of a bank account not only places the victim and her children in jeopardy of poverty and homelessness, but also may limit her access to legal assistance if free or low cost representation is not an option in her jurisdiction.

210. Domestic violence is one of the greatest causes of homelessness among women and children. See HUNGER AND HOMELESSNESS SURVEY, U.S. CONFERENCE OF MAYORS 64 (2005) available at <http://www.usmayors.org/hungersurvey/2005/HH2005FINAL.pdf>.

211. Based on the author's nineteen years of representing battered individuals seeking protection from abuse. Utility shut-off, particularly in the winter months, presents great difficulties for survivors of intimate partner violence. Not only are utility companies slow to respond, some works react with a clear lack of understanding of intimate partner violence. The author has found that without a good advocate, many battered individuals face great difficulty reactivating utility service.

212. For battered women who are employed or seek employment subsequent to termination of the abusive relationship, lack of child care may result in lost wages or termination of their employment. See SANDERS, *supra* note 151, at 30.

213. See SCHNEIDER, *supra* note 3, at 156–57.

214. See Coker, *supra* note 123, at 188.

215. *Id.*

216. Pollet, *supra* note 188, at 41.

217. *Id.*

victim's property.<sup>218</sup> This problem is two-fold. Not only does the batterer exploit the victim's resources, he also destroys her credit in the process.<sup>219</sup> In turn, his victim's dependence upon him increases. It is clear that the fallout from credit problems can have long-term implications. Damage to the victim's credit score can decrease the likelihood that she will be eligible for auto or education loans, affordable housing, and other life necessities.<sup>220</sup>

Once the survivor's credit is compromised it can take years for an individual to repair her credit score.<sup>221</sup> Because consumer reporting companies can report truthful negative information for seven years and bankruptcy information for ten years,<sup>222</sup> a survivor of domestic violence with bad credit will suffer negative effects for nearly a decade. A poor credit score results in higher interest on credit cards and other loans, the increased likelihood that she will be seen as a credit risk, as well as limited options, both personally and professionally.<sup>223</sup>

Not only will a survivor of economic exploitation have a difficult time securing stable housing and transportation, which affect labor force participation, her employment success will be negatively influenced in other ways as well.<sup>224</sup> Her employment options will be greatly reduced, as negative credit discourages would-be employers from hiring her for a position that is entrusted with handling money.<sup>225</sup> Retail, store clerk, food service register employee, bank teller, payroll, or office manager are just a few of the many labor force positions which may be unavailable to a battered women with bad credit.

### 3. *Destruction of Social Capital*

*The idea that money is the answer, no matter what the question, has hijacked our collective soul.*<sup>226</sup>

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218. See SANDERS, *supra* note 151, at 31–32, 34–35, 38–40.

219. *Id.* at 39.

220. See Coker, *supra* note 123, at 188.

221. See SANDERS, *supra* note 151, at 56.

222. See FED. TRADE COMM'N., *Credit Repair: How to Help Yourself*, <http://ftc.gov/bcp/edu/pubs/consumer/credit/cre13.shtm> (last visited Jan. 10, 2014).

223. FED. TRADE COMM'N., *How Credit Scores Affect the Price of Credit and Insurance*, <http://www.consumer.ftc.gov/articles/0152-how-credit-scores-affect-price-credit-and-insurance> (last visited Jan. 10, 2014).

224. Peg J. Dierkers, *All Too Common, Domestic Violence Is Still Preventable: As I See it*, PENNLIVE (Oct. 1, 2013, 5:15 AM), [http://www.pennlive.com/opinion/index.ssf/2013/10/all\\_too\\_common\\_domestic\\_violence\\_is\\_still\\_preventable\\_as\\_i\\_see\\_it.html](http://www.pennlive.com/opinion/index.ssf/2013/10/all_too_common_domestic_violence_is_still_preventable_as_i_see_it.html).

225. Gary Rivlin, *The Long Shadow of Bad Credit in a Job Search*, N.Y. TIMES (May 11, 2013), [http://www.nytimes.com/2013/05/12/business/employers-pull-applicants-credit-reports.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/05/12/business/employers-pull-applicants-credit-reports.html?pagewanted=all&_r=0).

226. See RON GALLEN, *THE MONEY TRAP* 5 (2002).



Resources are not exclusively financial. The isolation of the victim, which occurs frequently in intimate partner violence cases, strengthens the batterer's control.<sup>227</sup> In turn, isolation promotes economic insecurity in a variety of ways including but not limited to the loss of social capital.<sup>228</sup> According to Professor Moshe A. Milevsky, "[s]ocial capital is loosely defined as the collection of networks, cooperation, relationship, norms, mutual aid, faith, and various other forms of 'glue' that hold a community together."<sup>229</sup> Milevsky maintains that social capital has "a profound impact on financial matters."<sup>230</sup> Specifically, the greater your social capital the less likely you are to experience financial hardship.<sup>231</sup>

For women who are abused, strong community and family ties ensure safety, weak ties promote risk.<sup>232</sup> For a woman in a violent relationship, social capital can take the form of family, friends, neighbors, coworkers, as well as other individuals or organizations in the community.<sup>233</sup> Social capital can ensure a woman's physical safety, as well as her financial security.<sup>234</sup> For example, if she flees her abusive home in the middle of the night, a close relationship with a neighbor may enable her to stay with that individual for a day or even longer. That same neighbor may be more likely to intervene or contact the police if an altercation occurs. Friends and family can provide emotional support, as well as some of the material resources necessary to help the victim end the violent relationship. Resources

227. See SANDERS, *supra* note 151, at 33.

228. See MARK VISSER, *THE RELATIONSHIP BETWEEN ECONOMIC STRAIN AND SOCIAL ISOLATION* 18 (2012).

229. See MOSHE A. MILEVSKY, *YOUR MONEY MILESTONES: A GUIDE TO MAKING THE 9 MOST IMPORTANT FINANCIAL DECISIONS OF YOUR LIFE* 108–09 (2010). Although Milevsky does not consider social capital in the context of intimate partner violence, social capital is critical to the safety of battered women.

230. *Id.* at 109.

231. *Id.* Milevsky explains:

The reality is that social capital also serves a smoothing function. How so? If you live in a community or society with high social capital values, you are much less likely to experience disruptions in your standard of living. Think about the neighborhood or community where you live. If you happen to run out of flour while baking a cake or need to jump-start your vehicle to get to work one morning, how many neighbors within a short walking distance would you feel comfortable borrowing the cup of flour or jumper cables from?

*Id.*

232. See *Breaking Isolation: Domestic Abuse and Workplace Support*, SELFEDUK, <http://www.selfed.org.uk/breaking-isolation-domestic-abuse-and-workplace-support> (last visited Jan. 10, 2014).

233. See SOCIAL ENTREPRENEUR FORUM, *The Definition of Social Capital*, <http://socialentrepreneurforum.com/index.php/tag/examples-of-social-capital/> (last visited Jan. 10, 2014).

234. See VISSER, *supra* note 228, at 18.

do not necessarily have to be in the form of actual dollars; the provision of temporary food, clothing, shelter, and emotional support increase the odds of breaking free from the violent relationship.<sup>235</sup>

Yet perpetrators of intimate partner violence are well aware of the value of social capital.<sup>236</sup> It is not uncommon for a batterer to completely restrict his partner's contact with neighbors, friends, and family members.<sup>237</sup> This behavior may result from a desire to maintain total control over his partner, as well as to guarantee that she has no support system. This loss of contact with family, friends, neighbors, and former coworkers reinforces her financial dependence upon her abuser.<sup>238</sup>

Restricting contact with others may cause a total loss of family and community support.<sup>239</sup> The destruction of social capital not only reinforces the batterer's control, it also creates other negative outcomes for women in abusive relationships.<sup>240</sup> Isolation prevents "would-be" witnesses from observing injuries or acts of abuse, the procurement of photographic evidence, calls to law enforcement, and intervention by third parties. This in turn reduces the likelihood of eyewitness testimony or physical evidence at trial to prove that acts of abuse occurred. As a result, the likelihood that violence will be prevented or halted is greatly diminished.<sup>241</sup>

Further, even when there are witnesses to the acts of abuse or the aftermath, such as family, friends, and former co-workers, these individuals may be reluctant or unwilling to testify on behalf of a victim.<sup>242</sup> Although some reluctance to testify may result from a fear of retaliation, certain individuals may be unwilling to get involved, in part, due to their weak ties to the victim.<sup>243</sup>

Batterers often control tangible resources to prevent their partner from obtaining social capital.<sup>244</sup> By restricting his partner from using the vehicle or the phone for example, the batterer not only prevents his partner from physically leaving or calling for help,

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235. See Coker, *supra* note 123, at 188.

236. See Lowe & Prout, *supra* note 134, at 33.

237. Many of the clients I represent report that they have not had contact with family members and friends for years due to the controlling nature of their batterer. In addition, many report that they have no relationship with or have never even spoken to their neighbors.

238. See SANDERS, *supra* note 151, at 33.

239. *Id.*

240. *Id.*

241. See Coker, *supra* note 123, at 188.

242. See Sara J. Berman, *Domestic Violence and Domestic Abuse*, NOLO, <http://www.nolo.com/legal-encyclopedia/domestic-violence-33813.html> (last visited Jan. 10, 2014).

243. See Coker, *supra* note 123, at 188.

244. See SANDERS, *supra* note 151, at 33.

he also increases her social isolation. Without a strong support system, a woman who is abused will face great difficulties in her struggle to access the resources necessary to end the violent relationship. What is more, should she succeed in breaking free from the violence she will have no one to turn to for assistance when faced with the financial hardships resulting from separation from the abusive partner.

### III. CIVIL PROTECTIVE ORDERS (CPO)

*The relationship between extreme poverty and violence against women is complex, yet we do know that successful efforts to increase the safety of impoverished women must include strengthening their ability to support themselves and their children.*<sup>245</sup>

For many women in abusive relationships, there is little question that a civil protection order (CPO) is a critical alternative remedy to the criminal prosecution of the batterer.<sup>246</sup> Experts maintain that women who are battered tend to choose to file for civil protection over other legal alternatives for a variety of reasons.<sup>247</sup> Not only is

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245. Patricia Cole & Sarah M. Buel, *Safety and Financial Security for Battered Women: Necessary Steps for Transitioning from Welfare to Work*, 7 GEO. J. ON POVERTY L. & POL'Y 307, 309 (2000).

246. For an analysis of the differences between civil protection from abuse orders and criminal prosecution, see Jane K. Stoever, *Freedom from Violence: Using The Stages of Change Model to Realize The Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 320 (2011).

247. *Id.* at 318–21. Stoever provides:

**Figure 1:** Although many people conflate civil protection orders and criminal restraining orders, there are essential distinctions that make protection orders a more attractive option for many individuals. First, a civil protection order case is a survivor's own case, not the government's. The survivor defines the nature of the problem and chooses when to bring the case, which events to allege, and what relief to pursue in an attempt to meet her particular safety needs . . . [O]rders may commonly include relief that prohibits the respondent from abusing, threatening, harassing, and assaulting the petitioner and her children and from destroying their property; prevents the respondent from contacting or coming near the petitioner, children, and certain locations; requires the respondent to enter domestic violence, parenting, drug, and/or alcohol counseling; awards temporary custody, visitation, and property; orders the respondent to vacate a shared residence; and requires the respondent to pay attorney's fees . . . The wide-ranging injunctive relief available in civil protection orders is far more comprehensive than relief offered through the criminal restraining orders, which solely order the respondent not to come near, contact, assault, or threaten the victim. The civil orders are also available more immediately through the ex parte emergency order and the longer-term order that is entered within weeks. In civil litigation, the petitioner can request to dismiss the case if she determines the

the CPO an effective means of reducing the risk of physical violence,<sup>248</sup> beyond no-contact, stay away and no-abuse provisions, in some jurisdictions civil protection orders provide ancillary relief in the form of temporary child custody, financial support, housing, personal property, and removal of the perpetrator.<sup>249</sup> In particular, one of the keys to a holistic approach to combating intimate partner violence is the inclusion of a financial focus to established efforts.<sup>250</sup>

All U.S. jurisdictions currently maintain a statutory remedy in the form of a civil protection order (CPO) for individuals seeking protection from an intimate partner.<sup>251</sup> The CPOs fall into three broad categories with regard to the provision of financial support. In category one, the statute contains no provision for financial support and has no catch-all provision.<sup>252</sup> In category two, the law provides no specific authority to order support but maintains a catch-all provision which enables the court to provide any relief necessary to protect

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civil protection order is not helpful to her, whether because it does not meet her needs or because she anticipates that increased danger will result. Her right to exercise autonomy takes precedent over any general public interest. The civil remedy can be contrasted with the prosecutor's office deciding whether to bring charges and what to charge . . . most often without seeking the abuse survivor's input . . . There are a multitude of reasons why a survivor may desire court protection but not wish to pursue criminal sanctions, and protection orders offer the survivor a tailored order that holds the respondent legally accountable with the threat of criminal sanctions for its violation.

*Id.*

248. *Id.* at 318–19. Stoeber explains:

Researchers have found that when abused women seek help from the civil justice system by filing for a protection order, they experience “significantly lower levels” of violence—including threats, physical abuse, stalking, employment-related harassment, and other risk factors for femicide—regardless of the outcome of the case. One study that measured the efficacy of protection orders over an eighteen-month period found that when a woman applied and qualified for a protection order, she experienced a “rapid and significant decline in violence,” which was sustained through the duration of the study. Another survey of protection order petitioners found that when women applied for orders, 98 [percent] felt more in control of their lives, 89 [percent] felt more in control of the relationship, and women generally reported that the act of applying for the order improved their sense of well-being. In follow-up interviews, 80 [percent] of participants felt safer, 85 [percent] reported that their lives had improved, and over 90 [percent] felt better about themselves.

*Id.*

249. *Id.* at 363–65.

250. See Lowe & Prout, *supra* note 134, at 33.

251. See *Domestic Violence Civil Protection Orders (CPOs) by State*, A.B.A. COMM'N ON DOMESTIC VIOLENCE (June 2009), [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/dv\\_cpo\\_chart.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/dv_cpo_chart.authcheckdam.pdf) [hereinafter *CPOs by State*].

252. See Heather R. Parker, *Access Denied: The Disconnect Between Statutory and Actual Access to Child Support for Civil Protection Order Petitioners*, 76 U. CIN. L. REV. 271, 281 (2007) (stating that thirty-four states authorize spousal support, implying that some of the remaining sixteen states do not).

the victim and her children.<sup>253</sup> In category three, the court is specifically authorized to order support as part of the CPO.<sup>254</sup>

Even jurisdictions that provide economic remedies, however, rarely provide petitioners with the level of financial support or other resources necessary to survive on their own.<sup>255</sup> In fact, despite intended differences, the civil protection process has proved to be surprisingly similar to the prosecution of criminal cases in several significant ways.<sup>256</sup> First, the court's primary focus continues to remain on the act or acts of abuse—what occurred.<sup>257</sup> Second, hearing time is predominantly spent on proving the allegations of abuse (although the standard of proof is lower), and not on the relief necessary to ensure the victim and her children are best protected from future abuse.<sup>258</sup> And third, the actual relief entered tends to be no-contact and no abuse provisions (restrictions on the perpetrator), and not support, housing, or other ancillary relief that goes to the heart of recidivism.<sup>259</sup> Because the court is largely focused on traditional criminal justice matters, less attention is paid to vital features of the civil remedy—the provision of ancillary relief aimed at eliminating the batterer's power to control the victim beyond criminal acts of abuse.<sup>260</sup> Accordingly, although the civil system has the promise of affording greater protections, it fails to reach that potential in many cases due, in part, to either statutory limitations or to its application by individual judges.

#### A. Defining Abuse & Protected Class Members

*[T]he diffusion of images of women hurt by their partners has unquestionably made the use of force a litmus test . . . .*<sup>261</sup>

Although legal scholars tend to define abuse broadly,<sup>262</sup> courts often focus on physical acts of violence and threats of harm as a

253. See Coker, *supra* note 123, at 187.

254. These three broad categories are discussed *infra* Part II.A.

255. See Coker, *supra* note 123, at 187.

256. *Id.* at 188.

257. *Id.*

258. *Id.* at 187.

259. *Id.* at 188.

260. Stoeber, *supra* note 246, at 315.

261. See STARK, *supra* note 1, at 83.

262. See Pollet, *supra* note 188, at 40 (explaining that economic abuse includes any of the following acts by the abuser: placing the property solely in his name; preventing the other partner from working or going to school; exclusive financial control; stealing or destroying the victim's property; withholding information or access to finances; retaliatory termination of utilities or telephone; and failure to pay support).

basis for the entry of a civil protection order. Although there is little question that survivors of physical violence and threats of harm face a variety of difficulties securing civil protection,<sup>263</sup> women who experience intimate partner violence in the form of coercive control or financial abuse are presented with distinct challenges.<sup>264</sup> In fact, many jurisdictions do not specify economic abuse as a statutorily enumerated act of domestic violence.<sup>265</sup> As a result, the acknowledgement and identification of economic abuse or financial deprivation by individual judges is unpredictable. Moreover, given the lack of attention paid to this type of intimate partner violence, practicing attorneys may fail to recognize that the perpetrator's acts rise to the level of abuse given how a particular jurisdiction defines domestic violence.

Civil protection order statutes in the vast majority of states define domestic violence as an act, or a threat of, physical or sexual harm.<sup>266</sup> Jurisdictions that focus exclusively on individual acts of physical abuse or a threat of physical harm deny victims of economic abuse important protections.<sup>267</sup> As a result, in these jurisdictions would-be petitioners are not only precluded from seeking protection from abuse, they are also denied the ancillary relief necessary to break the cycle of abuse.

Arkansas, for example, defines domestic violence as “[p]hysical harm, bodily injury . . . or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members” or “[a]ny sexual conduct between family or household members . . . that constitutes a crime . . . .”<sup>268</sup> Similarly, Connecticut limits protected class members to only those individuals who have experienced a threat of “continuous physical pain” or injury.<sup>269</sup>

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263. Our legal system's expectation that petitioners who seek civil protection orders will have readily available evidence of the abuse beyond their own testimony (such as police reports, eyewitness, photographic evidence, prior convictions, 911 tapes, and hospital reports) at the time of trial and possess the legal skill required to present the evidence to the court belies the dynamics of intimate partner violence and the complexities of our legal system. *See Coker, supra* note 123, at 187.

264. It is not this author's intention to make comparisons between women who experience physical abuse and those who are victims of economic abuse. In fact, many battered women experience a multitude of abusive acts (physical, sexual, emotional, and economic) during the course of an abusive relationship. It is important, however, to understand that intimate partner violence must be defined broadly to identify the greatest number of protected class members.

265. *CPOs by State, supra* note 251.

266. *Id.*

267. *Id.*

268. ARK. CODE ANN. § 9-15-103 (3)(A)-(B) (West 2013).

269. CONN. GEN. STAT. ANN. § 46B-15(a) (West 2013).

By limiting the protected class to only those individuals who are able to prove a threat of or actual physical harm, a large number of individuals in abusive relationships are left unprotected. As a result, victims of intimate partner violence who would otherwise be able to prove “coercive control”<sup>270</sup> or economic abuse are precluded from seeking what they need the most—ancillary relief in the form of financial support.

Although women who experience intimate partner violence may suffer from physical abuse and economic control at the same time, proving that either occurred presents a host of challenges.<sup>271</sup> First, not all acts of intimate partner violence are physical in nature.<sup>272</sup> Second, even physical acts of violence do not always result in identifiable injuries.<sup>273</sup> Third, in domestic violence cases in particular, it is not uncommon—even when injuries do occur—that evidence is not secured.<sup>274</sup> As a result, it is often exceedingly difficult to prove acts of intimate partner violence even when they are criminal in nature.

Because of the difficulties proving individual acts of intimate partner violence, establishing a pattern of coercive control may be the key to providing much needed protections to women in abusive relationships. Yet, victims of coercive control are often barred from providing evidence of economic abuse, as well as their need for protection from the harms that result from economic abuse due to statutory language or interpretation.<sup>275</sup>

Our system’s narrow focus on acts that rise to the level of criminal conduct neglects the historical intent and purpose of civil protection generally. These civil laws were based on the idea that intimate partner violence takes many forms.<sup>276</sup> In addition, the civil protection order was created to provide a survivor of domestic violence with an alternative to the criminal justice system, to give her control over the process, and to provide relief well beyond the limitations of our criminal justice system.<sup>277</sup>

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270. See STARK, *supra* note 1, at 15. Dr. Evan Stark defines “coercive control” as follows: [C]oercive control entails a malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).

*Id.*

271. Stoever, *supra* note 246, at 303.

272. Lowe & Prout, *supra* note 134, at 32.

273. STARK, *supra* note 1, at 94–95.

274. *Id.* at 95.

275. Lowe & Prout, *supra* note 134, at 2.

276. *Id.*

277. For details of the difference between civil protection and the criminal justice system, see Stoever, *supra* note 246, at 320.



As a result, a limited number of jurisdictions provide an expanded definition of domestic violence.<sup>278</sup> While not specifically listing financial control within the definition of abuse, some jurisdictions include a catch-all provision beyond allegations of physical violence and threats of harm which may rise to the level of abuse in accordance with the intent and purpose of the civil protection act.<sup>279</sup> Louisiana is one such jurisdiction that maintains an expanded definition of abuse,<sup>280</sup> specifying that domestic violence includes “but is not limited to” criminal acts.

Some jurisdictions provide even greater clarity. For example, Delaware includes “[a]ny other conduct which a reasonable person . . . would find threatening or harmful,” as part of its definition of abuse.<sup>281</sup> Although such nondescript provisions leave open the possibility of protections for victims of economic abuse, these laws are open to interpretation at the discretion of individual judges. As a result, victims of economic abuse are left wondering what protections are available to them. Moreover, depending on the views of individual judges, survivors of economic abuse may be seen as less deserving of protection than survivors of physical abuse, threats of harm, or other conduct a reasonable person would find as harmful.

### *B. Financial Remedies*

*Poverty and battering are mutually reinforcing  
traps . . . .*<sup>282</sup>

Financial independence shifts power within the intimate relationship.<sup>283</sup> The economics of intimate partner violence suggest that financial independence provides a woman who is battered with the freedom to control what is fundamental—food, clothing, and shelter.<sup>284</sup> In addition, this freedom to control has large-scale implications—the power to control one’s own actions, future, and fate.

Even if economic abuse is not the primary reason why a petitioner seeks protection, it can become a successful tool for a perpetrator of intimate partner violence to regain power over a partner who seeks to end the abusive relationship.<sup>285</sup> As a result, for a woman

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278. *CPOs by State*, *supra* note 251.

279. *Id.*

280. LA. REV. STAT. ANN. § 46:2132(3) (2013).

281. 10 DEL. CODE ANN. tit. 10, § 1041(1)(h).

282. *See* BRUSH, *supra* note 181, at 123.

283. Coker, *supra* note 123, at 188.

284. *Id.*

285. *Id.*

to remain free from abuse, protections must be put in place both to secure her safety and to ensure her economic independence.

Civil protective orders are an effective way of taking immediate action by removing an abuser from the home and thus ceasing (although sometimes only temporarily) the violence. Removal of the abuser from the home both interrupts the violence as well as provides a safe haven for women and their children. Ordering the abuser to stay away from and to have no contact with his victim provides additional protective measures. First, the survivor of domestic violence and her children are able to begin the healing process without interference from the abuser.<sup>286</sup> Second, the batterer, if receptive, can begin the process of rehabilitation.

Financial support pursuant to a civil protection order is one of the essential elements to ensure freedom from abuse. Economic remedies may come in the form of child, spousal, or household support, as well as interim alimony.<sup>287</sup> The court may also have the authority to order the abuser to pay the victim compensation for losses suffered as a direct result of domestic violence, for counseling, or for other medical costs.<sup>288</sup>

Rhode Island is an example of a jurisdiction that falls within the first category—a state that neither specifically authorizes the court to order support to the petitioner nor possesses a catch-all provision that enables a petitioner to seek support pursuant to the civil protection order.<sup>289</sup> As a result, battered petitioners must seek support by filing additional petitions with the court.<sup>290</sup>

Separate filings and hearings add an additional layer of difficulty to a challenging legal and emotional battle that women who are abused must wage when seeking protection from our courts. In addition to the onerous civil protection proceeding, further hearings must be scheduled on an emergency basis, if possible, to ensure that

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286. When the batterer is permitted to have contact with his victim, he has the opportunity to successfully convince her that she will not be able to survive without him. Batterers may use both economic threats as well as threats of physical harm. Given the economic vulnerability of the victim, the batterer can be very persuasive reentering her life.

287. See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 2 HOFSTRA L. REV. 801, 912 (1993).

288. See Jerry J. Phillips, *What's a Good Woman Worth? Tort Compensation for Domestic Violence*, 47 LOY. L. REV. 303, 308–09 (2001).

289. R.I. GEN. LAWS ANN. § 8-8.1-3 (West 2013).

290. Although there is no indication in the statute that the court is authorized to order temporary support, advocacy documents maintain that the Rhode Island courts may order temporary child support pursuant to a restraining order for up to ninety days, upon notice to the respondent and a hearing. See *Domestic Violence Restraining Orders*, WOMENSLAW.ORG, [http://www.womenslaw.org/laws\\_state\\_type.php?id=582&state\\_code=RI&open\\_id=all#content-4222](http://www.womenslaw.org/laws_state_type.php?id=582&state_code=RI&open_id=all#content-4222) (last visited Jan. 10, 2014).

proper support is provided. The protective power of the domestic violence civil order (i.e., restriction from acting in an abusive or harassing manner generally), is greatly diminished if the perpetrator is able to control the victim through financial means.

Arizona, Connecticut, Hawaii, Idaho, Michigan, Nebraska, Oklahoma, Oregon, Washington, and Wisconsin fall within a second category of jurisdictions that do not specifically provide the court with authority to order child, spousal, or household support pursuant to the state's domestic violence civil protection act,<sup>291</sup> yet have what is considered a "catch-all" provision authorizing the court to provide any other relief that it deems just under the circumstances.

Arizona law, for example, does not specifically authorize the court to provide for spousal or child support but maintains a catch-all provision.<sup>292</sup> Yet, Arizona's Petition for Order of Protection provides no mechanism for a petitioner to make a request for spousal or child support, nor does the court's standard order for protection provide for support pursuant to the catch-all provision.<sup>293</sup> Jurisdictions falling within this second category often lack clarity within the language of the law which may lead to unpredictability with regard to outcomes for victims seeking protection.

A third category is comprised of states that specifically authorize the court to order support directly through the civil protection process.<sup>294</sup> Yet, even these jurisdictions place limits on the protected class members eligible for financial relief.<sup>295</sup> Vermont's statute, for example, specifically requires that the defendant have a duty to support the plaintiff or common child before the court will order a respondent to pay living expenses or support pursuant to a civil protection order.<sup>296</sup> These laws provide no remedy for women who cohabit with their abusers, even though these women tend to be poorer on average than married women.<sup>297</sup>

Legislators who empower the court to provide financial support pursuant to the civil protective order statute understand the

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291. See *CPOs by State*, *supra* note 251 (providing a breakdown of the child and spousal support provisions pursuant to the civil protection order act by state, in addition to other information regarding said civil protection orders).

292. ARIZ. REV. STAT. ANN. § 13-3602(G)(6) (2013).

293. See PROTECTIVE ORDER FORMS, available at <http://www.azcourts.gov/Portals/33/POforms.pdf>.

294. See *CPOs by State*, *supra* note 251.

295. *Id.*

296. VT. STAT. ANN. tit. 15, § 1103(c)(2)(E)–(F) (West 2013). Delaware, Alabama, and Alaska maintain a similar provision. See ALA. CODE § 30-5-7(d)(5) (2013); ALASKA STAT. § 18.66.100(c)(12) (2013); DEL. CODE ANN. tit. 10, § 1045(a)(6) (West 2013).

297. Jonathan Vespa & Matthew A. Painter II, *The Path to Marriage: Cohabitation and Wealth Accumulation* (Sept. 2007) (unpublished Ph.D. dissertation, The Ohio State University), available at <http://paa2008.princeton.edu/papers/81019>.

connection between domestic violence and poverty. Delaware, similar to Vermont, authorizes the court to provide support in the form of spousal and child support, as well as compensation for losses suffered as a direct result of domestic violence.<sup>298</sup> Individual judges, however, may fail to utilize the full force and effect of the law. The problem is two-fold. First, the actual dollar amount of the support ordered is important. If the support amount is not at a level that enables that victim to meet her basic living expenses, she is at risk of future violence given her abuser's ability to maintain control over her.<sup>299</sup> Second, the dollar amount of support ordered by the court is meaningless if our system fails to effectively enforce its orders.

### C. Enforcement

*[P]ut pressure on the law and, broadly conceived,  
the politics of public institutional response . . .*<sup>300</sup>

A civil protection order is simply a piece of paper—it is neither a bullet proof vest guaranteeing physical protection nor an assurance of ancillary relief. For the perpetrator who seeks to control his victim subsequent to the entry of an order, refusal to pay support is an effective means. A perpetrator who shuts off the heat, refuses to pay the rent, or neglects to mail the support check has comparable power to control as a batterer who threatens physical harm.

Admittedly, it is impossible to predict which abusers will take retaliatory actions, whatever the form, subsequent to the entry of a protection order. What we do know about perpetrators of intimate partner violence is that they violate civil orders of protection regularly.<sup>301</sup> Criminal violations such as physical acts of violence, threats of harm, and no-contact violations are generally addressed through the criminal justice system.<sup>302</sup> Yet, enforcement of ancillary relief pursuant to a civil protection order, such as support, is typically the responsibility of the abused individual.<sup>303</sup> And although a victim has the right to contact law enforcement in response to an abuser's

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298. DEL. CODE ANN. tit. 10, § 1041 (West 2013).

299. See Lowe & Prout, *supra* note 134, at 32–33.

300. Jane Maslow Cohen, *Private Violence and Public Obligation: The Fulcrum of Reason*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 356 (Martha Albertson Fineman and Roxanne Mykitiuk eds., 1994).

301. See David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 OHIO ST. L.J. 1153, 1153 (1995).

302. See Judith A. Smith, *Battered Non-Wives and Unequal Protection Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 107 (2005).

303. *Id.*

failure to comply with the support provisions of a civil order of protection, such contacts to law enforcement are rarely treated as a high priority.<sup>304</sup>

The vast majority of individuals who have a civil protection order must seek to enforce the support provisions of that order on their own, with the assistance of a pro bono attorney or by hiring private counsel.<sup>305</sup> Given the inadequate finances of most survivors and the limited resources of many legal aid agencies, pro bono organizations, and law school clinics, many women represent themselves in their quest to enforce court-ordered support provisions.<sup>306</sup> The problems associated with self-representation,<sup>307</sup> however, are not the only difficulties women face seeking to enforce a civil protection order.

A support provision pursuant to a civil protection order is only as effective as an individual judge demands it to be. Batterers who choose to disregard the support provisions of the civil order and are merely reminded of their obligation to pay support at a court proceeding for contempt will have little incentive to comply with the order in the future.

In some cases multiple motions for contempt must be filed over an extended period of time, resulting in little more than the court holding the respondent in contempt of the order and again mandating that the perpetrator do what is already required—comply with the previously ordered support obligation.<sup>308</sup> For an individual of limited financial resources, the failure on the part of our legal system to hold the batterer accountable over an extended period of time may result in utility shut off, foreclosure, homelessness, an inability

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304. *Id.* at 146.

305. Zlotnick, *supra* note 301, at 1170.

306. *Id.* at 1197.

307. Certainly self-representation is not preferable for a survivor of intimate partner violence. Without a strong advocate, many survivors are no match for their abuser in a court proceeding, an abuser who may seek to harass or intimidate the battered individual through the court process.

308. For example, during the course of researching and writing this Article, the author was acting as a mentor for a volunteer attorney who accepted his first family case with a local pro bono agency. The pro bono attorney explained to the author that he was frustrated with the family court judge after he handled a contempt matter for a battered woman seeking to enforce the support provision of her civil protection order. The pro bono attorney expressed his surprise that the judge would find the abuser in contempt for failure to comply with the support provision and yet simply order him to pay the support he already owed without placing the abuser on work release or providing some other guarantee of payment. This author was sorry to admit to the pro bono attorney that the outcome was standard practice, and not an exception to the rule, in these cases. Although other options were explored, regrettably his client (a mother of two who speaks no English) is considering returning to her abusive spouse in order to feed her children and avoid eviction from her apartment. This is clearly the outcome her abusive partner has been hoping for all along, given his inquiries to counsel regarding reconciliation.

of the victim to feed herself and her children, family services investigations, credit problems, and bankruptcy.

Ultimately the abuser and his victim learn valuable lessons: (1) there are few consequences to those who fail to comply with the court's order; (2) filing for contempt in the future will be futile; and (3) the legal system places little value on its own orders.

One way to monitor the respondent's compliance with the provisions of the civil order and to take the responsibility out of hands of the victim is to institute a court monitoring program. The court can schedule compliance hearings within 30 to 60 days of the entry of the civil order to confirm that the batterer is meeting his obligations pursuant to the civil order. Under this system, the court holds the batterer accountable, takes the burden off the petitioner, safeguards necessary resources, and reduces the risk of future harm.

Regrettably, judges often have limited power when a batterer fails to pay support pursuant to a civil order of protection. If the abuser is held in contempt, the judge can order fines, incarceration, civil contempt, or work release. Ordering the respondent to pay additional fines for his failure to pay support is unlikely to result in the batterer's compliance with his original support obligation. Incarceration also fails to provide a viable option, as it may place the batterer's employment in jeopardy while doing little to ensure the victim receives support. On the other hand, holding the batterer in civil contempt in lockup until he pays back support may be an effective incentive for some abusers. Finally, work release may be the best possible alternative to traditional incarceration as it will ensure payment as well as allow the batterer to continue to work.

#### IV. ON THE ROAD TO FINANCIAL SECURITY: AREAS OF CONCENTRATION

*[T]he remedies for battering and poverty need to focus on the same systemic phenomena that cause them. Thus, feminists call for structural changes in class, race, and gender relations; safety, justice, and human rights for those historically exploited and violated; and accountability, redistribution, and reorganization of resources and power . . . .*<sup>309</sup>

Financial freedom is one of the critical keys to ending violence in the lives of battered women and their children.<sup>310</sup> Ensuring the

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309. BRUSH, *supra* note 181, at 32.

310. Coker, *supra* note 123, at 188.

economic stability and, in turn, the protection of abused individuals is complex—there is no simple answer to the problem.<sup>311</sup> Instead, the safety of women and children can only be achieved through a multifaceted approach to financial security involving a variety of programs and participants. The following three principal solutions are considered within this section: (A) battered mandated support; (B) wage and labor parity; and (C) social welfare.

#### *A. Batterer Mandated Support*

*[B]attering “takes two”: an abusive man and a system of inequality and disadvantage that reinforces a woman’s vulnerability and limits her options for resistance and escape once he has “reeled her in.”*<sup>312</sup>

A reasonable initial response to the economic instability of women who are abused is the court-ordered support pursuant to a civil protection order, which is often the first stage of protection for the battered individual. Support pursuant to a civil protection order may take several forms. Temporary child support, for example, may be ordered if the parties have a child or children in common.<sup>313</sup> The entry of a temporary child support order, however, may result in unintended negative consequences for victims. If the court enters a minimum child support order due to lack of evidence of the batterer’s income, which often occurs given the expedited nature of these hearings, the victim may be barred from obtaining an emergency child support hearing following the entry of the CPO.

The civil protection hearing is not necessarily the ideal forum for addressing financial support. First, batterers are typically not required to bring documentation of income to a civil protection hearing. This presents challenges because petitioners are often unable to produce the financial documentation necessary to establish the batterer’s income given the victim’s lack of access to her abuser’s financial information, as well as her limited ability to secure documentation through discovery prior to trial.

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311. Identifying the ideal solution is multilayered necessitating a combination of batterer mandated support, public assistance, and private funding. This Article considers a solution-based approach focused primarily on battered mandated support mindful that other solutions such as private funding and public assistance are necessary to ensure the financial freedom of battered women.

312. BRUSH, *supra* note 181, at 31–32.

313. Klein & Orloff, *supra* note 287, at 890–91.



Second, the civil protective process is simply not designed to assess the financial needs of the petitioner or the income of the parties. These cases are often resolved without a true child support calculation. Moreover, the primary focus of the proceeding is abuse determination (adjudication), not restoration of the victim. As a result, these orders often fail to capture the actual level of support necessary to keep the victim and her children safe.

This problem arises at all stages of the case: pretrial, during negotiations, and at trial. At the pretrial stage the attorney, if one is involved, often focuses primarily on proving acts of abuse, as an act must be established for the court to enter an order.<sup>314</sup> Unless the petitioner is able to prove the batterer's behavior falls within the definition of abuse as defined by state law, the court will not have jurisdiction to order ancillary relief. Thus, unless the parties enter into a consent agreement, if an act of abuse or a course of conduct is not proved at the time of trial, the matter is dismissed. As a result, some lawyers may dedicate little time and attention to ancillary relief in the form of support, knowing that they must prove abuse first. Lawyers who do not spend time and attention on spousal or child support matters pretrial fail to meet their duty of competence as required by the rules of professional conduct.<sup>315</sup>

The negotiation stage may be another missed opportunity for petitioner or her counsel. If counsel is inadequately prepared to negotiate issues of support or lacks proper financial documentation, counsel will have little leverage to obtain a sufficient support agreement. In litigated cases, the vast majority of hearing time is spent proving acts of abuse. Further, judicial deliberation is often focused on whether those acts rise to the level of abuse as defined by law leaving insufficient hearing time for matters of ancillary relief. In addition, an attorney may be hesitant to request support during opening statements or early in the trial because it may appear that the petitioner's sole motivation for seeking a CPO is support, not protection. An opposing attorney or party who is able to persuade the trial judge of fraudulent intent may be successful in having the case dismissed, in particular, when there is little evidence of abuse.

Accordingly, the current CPO process results in the entry of lower support amounts for a longer period of time than the filing of a separate petition for child support. By providing this much needed—yet insufficient—temporary child support through the CPO, financial

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314. Competent representation requires preparation for proof of abuse and relief. *See* MODEL RULES OF PROF'L CONDUCT R. 1.1, 1.1 cmt. (1983).

315. *Id.* at R. 1.1.

security—one of the intended protective outcomes of the CPO process—does not ensue.

The entry of a spousal support award pursuant to a civil protection order presents many of the same challenges as the entry of a child support award at the time of the CPO hearing. In addition, victims who are not married to their abuser are typically unable to seek such relief. The provision of household support may be a viable alternative in cases where an abuser has no other legal obligation to support the petitioner. Courts, however, are less likely to enter support orders pursuant to a civil protection order, or they otherwise require a perpetrator to provide for a petitioner he would otherwise have no other legal obligation to support—by way of marriage or a child in common—even if a civil protection act provides relief in the form of household support.

The direct payment of household expenses (such as rent and utilities) is another remedy to ensure the safety and protection of the victim. The direct payment of household expenses is also often linked to a duty to support, triggering many of the problems previously considered. Yet, direct payment orders present additional challenges, placing even greater control in the hands of the batterer. These orders make it difficult for a petitioner to monitor payments, particularly when the property, lease, or utilities are solely in the name of the perpetrator. As a result, control is placed in the hands of the party who has a history of abusing his power and authority.

In addition, jurisdictions that provide ancillary relief in the form of support often do so for a limited period of time. For example, a number of jurisdictions provide support pursuant to a CPO for one year only,<sup>316</sup> even when the no-contact provision can be entered for an extended period of time. Once the year is up, support provided pursuant to the protective order expires. Thus, unless the battered person files a petition for support and receives an order prior to the expiration of the ancillary support provision, she will be financially unprotected should her batterer decide to stop paying support. Such an outcome is highly likely once the support order has expired.

Yet a petitioner who obtains temporary support as part of their protective order will be unable to establish that immediate and irreparable harm will result should she not be afforded an expedited hearing, given the existence of the temporary support award pursuant to the protective order. As a result, the petitioner may wait months for a full hearing on support. In the meantime, the batterer will be empowered while the victim suffers the financial repercussions

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316. *CPOs by State*, *supra* note 251.

from this flawed legal system. An automatic fast track or expedited hearing for all child and spousal support ancillary matters upon the entry of a civil protection order could ensure the financial freedom survivors need to remain free from violence.<sup>317</sup>

Requiring batterers to provide documentation of income at the time of the CPO hearing, eliminating direct pay orders, court monitoring, criminal enforcement of violations of CPO support provisions, and expediting support hearings post CPO hearing are just some of the alternatives available to encourage independence and to ensure the safety of victims of domestic violence and their children.<sup>318</sup>

Because this problem is multilayered, various public and private remedies must also be considered to ensure that women who are abused are able to remain free from their abusive partners.<sup>319</sup>

### *B. Wage & Labor Parity*

*Women are half the world's population, yet they do two-thirds of the world's work, earn one-tenth of the world's income, and own less than one per cent of the world's property. They are among the poorest of the world's poor.*<sup>320</sup>

Today women working substantially the same jobs as their male counterparts earn less.<sup>321</sup> According to a study by the Institute for Women's Policy Research, in 2009 "the median weekly earnings of full-time, female workers were 80.2 [percent] of what full-time male

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317. Once a battered woman is granted a hearing for support, it is likely that she will have a difficult time obtaining the services of an attorney. Although some battered women find it difficult to obtain legal representation for their CPO hearing, greater resources are available for legal services for individuals seeking protection orders than for other legal representation.

318. There are many issues post-protective order which must be addressed as well, such as long-term child and spousal awards, divorce and property division, as well as alimony awards, to ensure survivor independence and safety.

319. For alternative measures, see Cole & Buel, *supra* note 245, at 1 (calling for welfare reform); Shelby A.D. Moore, *Understanding the Connection between Domestic Violence, Crime, and Poverty: How Welfare Reform May Keep Battered Women from Leaving Abusive Relationships*, 12 TEX. J. WOMEN & L. 451, 457 (2003); Jennifer Sarkees, *Phase Three of New York State's Domestic Violence Law: The Financial Aftermath*, 14 BUFF. WOMEN'S L.J. 95, 96 (2006) (identifying welfare reform, equitable distribution, intestacy rights, and bankruptcy as key areas to consider).

320. GLOBAL FOOTPRINTS, HEC GLOBAL LEARNING, GENDER FOOTPRINT, available at <http://www.globalfootprints.org/women> (quoting Barber B. Conable, Jr., former president of the World Bank).

321. HEGEWISCH ET. AL., *supra* note 102, at 2.

workers earned.”<sup>322</sup> In fact, the study revealed that, on average, women earn less than their male counterparts in the vast majority of occupations.<sup>323</sup> Likewise, the Bureau of Labor Statistics reports that on average a female earns \$684 a week, while a male’s median weekly earnings is \$832.<sup>324</sup> As a result, working women on average earn \$7,696 less each year than working men. Considering these figures, over the course of a lifetime women could experience approximately \$307,840 in lost wages.<sup>325</sup> Moreover, the lost income figure fails to take into consideration breaks in employment due to the birth of a child, which are primarily borne by females. In fact, only 56.4 percent of women with infants under a year old participated in the labor force in 2008.<sup>326</sup> And although women tend to return to the labor force as their children grow older,<sup>327</sup> even temporary departures from the workforce with each new child are devastating to both female earnings and to opportunities for advancement.

If lapses in employment typical of the female labor experience are added to the equation, the total disparity in earning capacity between men and women is much greater. Although more and more families consist of two working parents (58.5 percent),<sup>328</sup> married women continue to be more likely than married men to leave the labor force to take care of the children. According to the Bureau of Labor Statistics, “the share of married-couple families where the father was employed (and the mother was not) was 30.4 percent; the

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322. *Id.* These figures fail to take into consideration race and gender. Curiously, at first glance white women appear to suffer greater income disparity than do black and Hispanic women. African American women earned ninety-one percent of black males and Hispanic women earned eighty-eight percent of the earnings of Hispanic men. See *Women at Work*, *supra* note 99. These divergent male to female ratios for minority workers may be due in large part to the lower earnings of black and Hispanic males as compared to white males.

323. HEGEWISCH ET. AL., *supra* note 102, at 2 (“Full-time, employed women on average earned less than their male counterparts in 104 of 108 occupations for which the Bureau of Labor Statistics (BLS) provides earning data for both male and female workers.”).

324. See BUREAU OF LABOR STATISTICS, U.S. Dept. Of Labor, *WOMEN IN THE LABOR FORCE: A DATABOOK* (2013), available at <http://www.bls.gov/cps/wlf-databook-2012.pdf>.

325. This monetary figure is based on a calculation of \$7,696 x 40 years of employment without any interruption. Interruptions in the lifetime employment of a worker, typical for child-bearing women, would equate to greater wage disparity for women.

326. See BUREAU OF LABOR STATISTICS, *Labor Force Participation of Mothers with Infants in 2008* (Sept. 2009), <http://www.bls.gov/cps/demographics.htm>.

327. According to the Bureau of Labor Statistics the rate of labor force participation of mothers with children between 6 and 17 years old are higher than those with children under age 6. See BUREAU OF LABOR STATISTICS, *Labor Force Participation Rates of Mothers, 1975–2008* (Jan. 2009), [http://www.bls.gov/opub/ted/2010/ted\\_20100507.htm](http://www.bls.gov/opub/ted/2010/ted_20100507.htm).

328. See BUREAU OF LABOR STATISTICS, *Employment Status of Parents, 2011* (Apr. 2012), [http://www.bls.gov/opub/ted/2012/ted\\_20120427.htm](http://www.bls.gov/opub/ted/2012/ted_20120427.htm).

share where the mother was employed (and the father was not) was 6.9 percent.”<sup>329</sup>

Compounding the problem, women are twice as likely to hold part-time jobs.<sup>330</sup> In fact, in 2002 approximately twenty-five percent of women in the labor force held part-time positions, whereas only eleven percent of men were employed in part-time jobs during the same time period.<sup>331</sup> These reduced hour jobs come at a price: fewer dollars and reduced benefits for the female part-time worker and her children.

Unexpectedly, wage disparity between male and female earnings increases in occupations with higher earning potential.<sup>332</sup> For example, a recent survey indicated that the ratio of female to male earnings for personal financial advisors was 58.4 percent, female to male insurance agents was 66.7 percent, female to male lawyers was 77.1 percent, and female to male postsecondary teachers was 77.3 percent.<sup>333</sup>

Not only do women tend to earn less than men when they work in the same occupations, but it is also evident that there continues to be significant gender segregation among occupations, with many women working in female-dominated lower paying occupations.<sup>334</sup> According to the Bureau of Labor Statistics, in 2011 women constituted 81.7 percent of all elementary and middle school teachers; 81.6 percent of all social workers; 74.9 percent of all tailors, dressmakers, and sewers; and 64.4 percent of all hotel, motel and resort desk clerks.<sup>335</sup> In contrast, women accounted for only 13.6 percent of all architects and engineers; 24.2 percent of all chief executives; 31.9 percent of all lawyers; 33.8 percent of all physicians and surgeons; and 34.1 percent of all news analysts, reporters, and correspondents.<sup>336</sup>

Curiously, in order to earn a living wage, a woman must employ greater economic resources for higher education than a male worker.<sup>337</sup> For example, a woman seeking a high-median pay job in a female-dominated occupation, such as paralegal (\$846 per week), must

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329. *Id.*

330. *Women at Work*, *supra* note 99, at 47.

331. *Id.* at 47.

332. *See Women at Work*, *supra* note 99.

333. *See id.*

334. HEGEWISCH ET. AL., *supra* note 102, at 2; *see also Women at Work*, *supra* note 99, at 48. According to the Bureau of Labor Statistics, in 2002, women were “underrepresented in many specific professions and overrepresented in others. For example, they comprise just 11 percent of engineers but 93 percent of registered nurses.” *Id.*

335. *See* BUREAU OF LABOR STATISTICS, *Women as a Percent of Total Employed in Selected Occupations, 2011* (May 2012), [http://www.bls.gov/opub/ted/2012/ted\\_20120501.htm](http://www.bls.gov/opub/ted/2012/ted_20120501.htm).

336. *Id.*

337. HEGEWISCH ET. AL., *supra* note 102, at 12.

pursue advanced education, while a male-dominated occupation of a similar pay grade, such as electrician (\$856 per week), requires no advanced education.<sup>338</sup>

Education, however, does provide some protection for women.<sup>339</sup> As a result, the greatest challenges lie with women who lack skills or education, while struggling to end a violent relationship. These workers, often employed in female-dominated low-skilled jobs, are more likely to fall at or near the poverty level.<sup>340</sup> Alternatively, individuals working in male-dominated low-skilled jobs are more likely to be able to support a family.<sup>341</sup> These findings indicate that women lacking education and employment skills—characteristics of women in violent relationships—will struggle financially to make ends meet once they separate from their abuser. In fact, experts maintain that abused women on welfare make substantially less per hour (seventy-six cents less per hour) than women on welfare who are not abused,<sup>342</sup> placing survivors of domestic violence at the lowest levels of our poor. The resulting poverty leaves them with few options.

The diminished earning capacity of employed females, however, is one of many struggles they encounter. Working women face many pressures: career-mom, caregiver, cook, and housekeeper. With these multiple pressures comes increased stress, which in turn results in poor health outcomes. As a result, overburdened working mothers may suffer physically and emotionally. For women exiting abusive relationships, these emotional and physical stresses are magnified

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338. *Id.*

339. RANDY ALBELDA & CHRIS TILLY, GLASS CEILINGS AND BOTTOMLESS PITS: WOMEN'S WORK, WOMEN'S POVERTY 26 (1997) (maintaining that "for women, education is particularly important in staving off poverty").

340. *See supra* Part III.A; *see also* Richard Tolman & Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, 56 J. SOC. ISSUES 655 (2000).

341. HEGEWISCH ET. AL., *supra* note 102, at 13.

342. BRUSH, *supra* note 181, at 56–57. Brush explains:

In terms of economic costs, mean wages for women in this study who reported physical violence were 76 cents per hour less than mean wages for respondents who did not report physical abuse. Similarly, the women who had ever filed a restraining order against an intimate partner (including one woman who filed during the follow-up period) averaged a 53-cent-per-hour decrease in their hourly wages over a follow-up period. The women who had not filed a restraining order averaged an increase in their hourly wages of approximately the same amount. At first blush, 76 cents per hour may not seem like a big wage gap between welfare recipients who do and welfare recipients who do not report having been physically abused. However, it is nearly 15 percent of minimum wage at the time when we conducted these interviews. In many of the low-wage occupations in the U.S. economy, the wage gap between women and men is less than 15 percent, and feminists still think of it as a significant material as well as a symbolic problem.

*Id.*



by the effects of intimate partner violence, which in turn place them at an increased risk for mental and physical health problems.<sup>343</sup>

In contrast, much of the old-world view that a woman can survive and even thrive by finding a man to support her continues to some extent.<sup>344</sup> Although young women today are encouraged to attend college or seek employment, through socialization, some young women continue to grow up believing that the men in their lives will support them financially.<sup>345</sup> Moreover, some men continue to prefer women who are willing to play a supportive role.<sup>346</sup> In fact, research suggests that “socialization in relation to gender norms continues to influence” the employment decisions of men and women today.<sup>347</sup> This practice is both risky and dangerous, as it leaves women vulnerable to abuse and exploitation.

Socialization is one of several factors that influence the entrapment of women. A female child raised to believe that a future husband will support her may forgo educational opportunities or job skills that would otherwise give her the power to control her future, which is critical should she need to break free from an abuser’s control.<sup>348</sup> The entrapment is made certain by the batterer’s ability to render his victim totally dependent upon him financially.<sup>349</sup> Further, male children socialized to believe that the man is the expected breadwinner may later discourage their female intimates from entering

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343. CTRS FOR DISEASE CONTROL, *Intimate Partner Violence: Consequences*, <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html> (last visited Jan. 10, 2014).

344. KERSTIN AUMANN ET AL., *THE NEW MALE MYSTIQUE, FAMILIES AND WORK INST.* 8 (2011).

345. See GALLEN, *supra* note 226, at 84 (“Ancient blueprints, which they thought had eschewed, come rushing in unbidden. All of a sudden, that old, dismissed idea that their husbands should take care of them becomes hard to shake . . . Now what?”). This practice is problematic for males as well, creating unfair expectations that they must shoulder the responsibility of supporting the family. In addition, young boys, solely because they are born male, may experience undue stress believing they must succeed financially in order to attract a mate. Certainly free choice between partners, based on planning and not gender, may result in one individual remaining outside the labor force to care for the children. Such a result may work best for a particular family and can be equitable, provided the decision is not based on gender alone. Certainly such evenhanded decision-making can be found in our society. Same-sex partnerships provide a good example of gender-blind family management. A couple may determine that it is best for the family unit to have one parent remain home to care for the children, choosing the caretaker based on a number of factors unrelated to gender, such as job-flexibility, earning capacity, household budget, a willingness or desire to remain outside the labor force, bonding, parenting skills, and related issues.

346. AUMANN ET AL., *supra* note 344, at 8.

347. HEGEWISCH ET. AL., *supra* note 102, at 1.

348. H. LIEN BRAGG, U.S. DEP’T OF HEALTH & HUMAN SERVS., *CHILD PROTECTION IN FAMILIES EXPERIENCING DOMESTIC VIOLENCE* 25 (2003).

349. *Id.*



the paid labor force, or deny other women access to employment opportunities over male applicants.<sup>350</sup> Together socialization and economic entrapment play a role in reducing the likelihood that a female victim will be successful in freeing herself from an abusive relationship.<sup>351</sup>

### C. Social Welfare

*If work were the universal solution to the problems of battering and poverty, surely those problems would be solved by now.*<sup>352</sup>

When it comes to poverty, gender matters. In fact, research suggests that “the most common face of poverty in the United States among adults is a woman’s.”<sup>353</sup> Yet gender, coupled with other key factors, increases “the probability of being poor.”<sup>354</sup> Race, marital status, education, and whether a single woman has children are some of the relevant aspects to consider.<sup>355</sup>

According to the U.S. Census Bureau, households headed by females were more likely to be in poverty than households headed by married couples or solely by males.<sup>356</sup> In fact, over 50 percent of female headed households experience episodic poverty.<sup>357</sup> Moreover, chronic poverty rates for these households were higher than for all other family types.<sup>358</sup> Specifically, female-headed households had a chronic poverty rate of 9.7 percent, male-headed households experienced slightly more than two percent, and married-couple families experienced a chronic poverty rate of 0.7 percent.<sup>359</sup> Not surprisingly, female-headed households also remained in poverty for longer periods of time when compared with any other family type.<sup>360</sup> And as we have seen, women who experience abuse are among the poorest of the poor.<sup>361</sup>

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350. BRUSH, *supra* note 181, at 47 (examining the “ideology of male breadwinning”).

351. BRAGG, *supra* note 348, at 18.

352. BRUSH, *supra* note 181, at 12.

353. ALBELDA & TILLY, *supra* note 339, at 23.

354. *Id.* at 24 (“[N]o matter how you look at the population, women are more likely than men to be poor. But it’s not just gender that matters. Race, ethnicity, education, age, and family type all greatly affect the probability of being poor as well.”).

355. *Id.* at 24 (referring to economist Nancy Folbre maintaining that “the highest risk of poverty comes from being female and having children—which helps explain the high rates of both female and child poverty in the United States”).

356. See ROBIN J. ANDERSON, U.S. CENSUS BUREAU, DYNAMICS OF ECONOMIC WELL-BEING: POVERTY, 2004–2006 (2011).

357. *Id.* at 7.

358. *Id.*

359. *Id.*

360. *Id.* at 11–12.

361. See *supra* Part IV.B.

The current economic crisis in the United States has acted as an aggravator, magnifying the negative financial implications for society as a whole and women in particular.<sup>362</sup> Since the recession, household income has declined.<sup>363</sup> Not surprisingly, the number of people experiencing poverty has been increasing at a significant rate since 2006.<sup>364</sup> According to a report by the U.S. Census Bureau, people living in poverty went from 43.6 million individuals in 2009 to 46.2 million individuals in 2010.<sup>365</sup>

Females and children suffer the most, with the recession serving to increase the divide between male and female poverty households.<sup>366</sup> For example, female-only headed households experience poverty at greater rates than male-only headed households (4.7 million female-headed households as compared to 880,000 male-headed households).<sup>367</sup> There was little change in the number of male only households in poverty from 2009 to 2010, compared with an additional 300,000 female only households entering poverty in 2010.<sup>368</sup>

Just as gender and poverty intersect, so do poverty and domestic violence. Research suggests that more than half of women receiving public benefits have been abused by an intimate partner at some point during adult life.<sup>369</sup> In fact, some studies indicate that the figure could be as high as eighty percent.<sup>370</sup> The Bureau of Justice Statistics reports that from 2001 to 2005, women “living in households with lower annual incomes experienced the highest average annual rates” of nonfatal intimate partner victimization, and women with incomes of less than \$7,500 experienced the highest levels of domestic violence.<sup>371</sup>

Housing stability is also related to both intimate partner violence and poverty. It is generally accepted among experts that one

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362. NAT'L WOMEN'S LAW CTR., POVERTY AMONG WOMEN AND FAMILIES, 2000–2009: GREAT RECESSION BRINGS HIGHEST RATE IN 15 YEARS 1 (2010).

363. CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010, at 5 (2011) (“Since 2007, the year before the most recent recession, real median household income has declined 6.4 percent”).

364. *Id.* at 14.

365. *Id.*

366. NAT'L WOMEN'S LAW CTR., *supra* note 362, at 3.

367. DENAVAS-WALT ET AL., *supra* note 363, at 18.

368. *Id.*

369. *See* Tolman & Raphael, *supra* note 340, at 655. *See also* Lowe & Prout, *supra* note 134, at 33 (maintaining that “nearly all states report 50–60 percent of public welfare recipients have experienced domestic violence”).

370. *See* Joan Meisel, et al., *Domestic Violence Prevalence and Effects on Employment in Two California TANF Populations*, 9 VIOLENCE AGAINST WOMEN 1191, 1198 (2003).

371. INTIMATE PARTNER VIOLENCE IN THE UNITED STATES, VICTIM CHARACTERISTICS, BUREAU OF JUSTICE STATISTICS 6 (2007) available at <http://www.bjs.gov/content/intimate/victims.cfm> [hereinafter VICTIM CHARACTERISTICS].

of the greatest causes of homelessness among women and children is domestic violence.<sup>372</sup> Not only do women who are abused require short-term shelter services to aid them to safely extract themselves and their children from violent homes, but also economic instability resulting from the violent relationship often creates long-term housing instability.<sup>373</sup> Female victims often lack title to real property, face difficult court battles to seek property rights, turn to shelter services, and struggle to meet the obligations that come with rental housing alternatives.<sup>374</sup>

In fact, statistical information related to renting and battering suggests that women who rent are victimized by intimates more than three times the rate of women residing in owned housing.<sup>375</sup> The high occurrence of intimate partner violence among women who rent is a multifaceted problem. Females who rent, compared with those in owned housing, are more likely to be separated from their abusive partners.<sup>376</sup> These same women are also likely to see their household incomes significantly decrease at the time of separation, as they no longer have access to their batterer's salary, property, or resources. Studies also indicate that separated women experience higher rates of intimate partner violence than women of other marital classes.<sup>377</sup> These separated women, who tend to be abused at higher rates, are also more likely to enter the poverty level at the time of their separation.<sup>378</sup> Thus, women who take protective measures, such as separation, as a result of domestic violence are likely to experience both poverty and intimate partner violence at higher rates; domestic violence acting as the catalyst for both their poverty and their increased risk of violence.

Given the foregoing statistics, the mistaken conclusion could be drawn that intimate partner violence is primarily a problem that affects the poor. Yet, the relationship between domestic violence and poverty is complex. Domestic violence scholars tend to agree that intimate partner violence is blind to socioeconomic status, maintaining that whether an individual will be abused is more closely linked to the victim's gender than any other factor.<sup>379</sup>

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372. See HUNGER AND HOMELESSNESS SURVEY, *supra* note 210, at 64.

373. Pavao et al., *Intimate Partner Violence and Housing Instability*, 32 AM. J. PREVENTIVE MED. 143, 143 (2007).

374. *Id.*

375. *Id.*

376. *Id.*

377. INTIMATE PARTNER VIOLENCE, *supra* note 371, at 3.

378. *Id.*

379. Research supports the proposition that gender is a good predictor of whether an individual will be victimized by an intimate. According to a 2007 report by the Bureau

Accordingly, there is much to suggest that poverty is not the cause of intimate partner violence nor does its presence alone indicate that intimate partner violence is to be expected in a particular relationship.<sup>380</sup> Instead, it is the batterer's ability to restrict his victim's access to financial and social capital that places her at a greater risk of experiencing poverty at the time of separation.<sup>381</sup> Furthermore, the resulting homelessness, hunger, and extreme financial hardship associated with poverty make it difficult for a survivor of domestic violence to refuse her batterer's attempts at reconciliation.<sup>382</sup>

Women who are abused are at an increased risk of poverty at the time of separation for a variety of reasons.<sup>383</sup> Women generally, as we have seen, are more vulnerable to male exploitation given their labor force experience.<sup>384</sup> Women face gender discrimination, job sex-typing, and wage gaps within the labor force; abused women in particular experience employment-related problems created by their batterers.<sup>385</sup> For example, batterers place restrictions on the employment or employability of their victims, wage a campaign to destroy existing employment opportunities, or use finances to abuse and control their victims.<sup>386</sup>

It may seem logical to conclude that entry into the paid labor force will provide much needed protections for women who are battered. However, employment alone does not necessarily resolve the poverty or safety concerns abused women face.<sup>387</sup> In fact, there is data that suggests that poverty and labor force participation may actually increase the risk of intimate partner homicide among women.<sup>388</sup> Race acts as an added risk factor.<sup>389</sup> Researchers in one study found that

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of Justice Statistics, females were more likely than males to experience nonfatal intimate partner violence. *See id.* at 1.

380. Rachel Jewkes, *Intimate Partner Violence: Causes and Prevention*, 359 *THE LANCET* 1423, 1424 (2002).

381. JILL DAVIES, *POLICY BLUEPRINT ON DOMESTIC VIOLENCE AND POVERTY*, NAT'L RESOURCE CENTER ON DOMESTIC VIOLENCE 6 (2002).

382. *Id.* at 5.

383. *Id.* at 6.

384. *Id.* at 5.

385. *See supra* Part II.B.

386. *See supra* Part IV.

387. BRUSH, *supra* note 181, at 23 (stating that the data she examined "calls into question the notion that waged work is always every woman's best route to safety and solvency. In addition, not all abuse has the same implications for a woman's employment, earnings, and welfare eligibility").

388. Edem F. Avakame, *Sex Ratios, Female Labor Force Participation, and Lethal Violence Against Women: Extending Guttentag and Secord's Thesis*, 5 *VIOLENCE AGAINST WOMEN* 1321, 1327 (1999), available at <http://vaw.sagepub.com> (explaining that researchers have found that "the female labor force participation rate increases the frequency of homicide victimization for women").

389. *Id.* at 1330.

“[w]hite women are more likely than African American and other minority women to be killed as a result of poverty and female labor force participation.”<sup>390</sup> The connection between employment, dangerousness, and race is multifaceted. The history of white women’s participation in the labor force, coupled with the controlling characteristics of a batterer, as well as various demographics, may help to explain this phenomenon.

Experts tend to agree that perpetrators of intimate partner violence seek to control their victims.<sup>391</sup> Social pressures men experience related to their expected role as breadwinner may also act as an aggravating factor. In addition, white women in abusive relationships tend to be closely tied to their perpetrators because they are more likely to be married than non-white women.<sup>392</sup> Moreover, married mothers tend to have lower employment participation rates than unmarried women.<sup>393</sup> As a result, white victims of intimate partner violence will not only be married to their abusers at greater rates than non-white victims, but—as a result of their marital status—will also remain outside the labor force in greater numbers. Because they do not have paid jobs, these white victims will also need to seek employment in response to the abuse in greater numbers than victims of other races. If the victim’s help-seeking efforts in the form of labor force entry are seen as a threat to the perpetrator’s power to control, she will be at an increased risk of harm due directly to her new employment.<sup>394</sup> Although this is true for all races, because minority women tend to be employed at higher rates generally, the number of victims at risk of “labor force entry retaliation” may in fact be higher for white battered women.<sup>395</sup>

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390. *Id.* at 1332.

391. See LUNDY BANCROFT & JAY G. SILVERMAN, *THE BATTERER AS PARENT* 5 (2002) (explaining that the “overarching *behavioral* characteristic of the batterer is the imposition of control over his partner”).

392. See U.S. CENSUS BUREAU, *Household Economic Studies, Number, Timing and Duration of Marriages and Divorces: 2009*, at 2–3 (May 2011), available at <http://www.census.gov/prod/2011pubs/p70-125.pdf> (explaining that race and ethnicity effect marriage, “with a higher percentage of Black women than non-Hispanic White women never married in each age group . . . . For example, 71 percent of Black women aged 25 to 29 had never married, compared with 43 percent of non-Hispanic White women in 2009”).

393. See BUREAU OF LABOR STATISTICS, *Labor Force Participation Rates Among Mothers* (May 2010) [http://www.bls.gov/opub/ted/2010/ted\\_20100507.htm](http://www.bls.gov/opub/ted/2010/ted_20100507.htm) (explaining that “unmarried mothers have higher participation rates than married mothers. In 2008, 76 percent of unmarried mothers were in the labor force, compared with 69 percent of married mothers”).

394. See NEIL WEBSDALE, *UNDERSTANDING DOMESTIC HOMICIDE* 20–21 (1999) (explaining that research supports a positive correlation between separation from an intimate relationship and “an increased risk of lethal violence” for the female partner); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5–7 (1991) (explaining the increased risks of violence after separation).

395. Avakame, *supra* note 388, at 1338.

The foregoing data in no way suggest that non-white women are not at risk of harm due to intimate partner violence. Battered women of all races and cultures experience hardships due, in large part, to gender, race, and culture.<sup>396</sup> Women of color have suffered years of gender and race bias, placing them at an extreme economic disadvantage today.<sup>397</sup>

Yet, the labor force entry retaliation data should not be ignored. This data suggests that intimate partner violence triggers must be considered when evaluating the soundest way to ensure the safety of battered women and their children. If the financial stability of battered women reduces the risk of recidivism by ending the hold batterers have on their victims, finding the safest way to help women who are abused achieve economic stability may be the key to ending the cycle of violence.

The special relationship between a woman and her abusive partner places her at an increased risk of harm. Unlike other crimes, a victim of intimate partner violence is tied to and dependent on the individual who commits the crime against her. Moreover, the batterer has easy access to and information about her help-seeking efforts, which is not typical of other crime victim and perpetrator associations. As a result, it is particularly difficult for a victim of intimate partner violence to put in place measures to ensure her safety and economic security prior to ending the abusive relationship.

Today, poverty acts as a barrier to exiting an abusive relationship for many women regardless of marital or employment status.<sup>398</sup> Given the current economic crisis, women face greater difficulties given the larger number of individuals overall in need, as well as the lack of available resources.<sup>399</sup> Census figures for 2011 are cause for concern; the data suggests that the poverty rate may be hitting levels not seen since the 1960s.<sup>400</sup>

A survivor who works faces financial challenges depending on the nature of her employment, the control her abuser has over the family finances, the extent to which the perpetrator exerts economic abuse, as well as the batterer's inclination to violate a court order. Combined with the problems women generally face related to work for pay, domestic violence-specific employment aggravators are devastating.

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396. *Id.* at 1321.

397. *See, e.g.*, Cole & Buel, *supra* note 245, at 314.

398. Nancy Salamone, *Domestic Violence and Financial Dependency*, FORBES (Sept. 2, 2012, 12:00 PM), <http://www.forbes.com/2010/09/02/women-money-domestic-violence-forbes-woman-net-worth-personal-finance.html>.

399. NAT'L WOMEN'S LAW CTR., *supra* note 362, at 1.

400. Hope Yen, *U.S. Poverty on Track to Rise to Highest Since 1960s*, ASSOC. PRESS (July 22, 2012) (explaining that "poverty is spreading at record levels across many groups").



In an ideal world, women would have equal opportunity in the labor market and perpetrators of intimate partner violence would comply with court-ordered support. As we know, however, the entry of a support order does not guarantee payment and may in fact place a woman who has been abused at greater risk of harm. Some of the greatest challenges arise in high-risk cases, yet risk and lethality assessments present a host of challenges.<sup>401</sup> By mandating batterer support, the victim is tied once again to her abuser, potentially placing her at greater risk for violence.<sup>402</sup> Moreover, such support orders may inflame that batterer and provoke a dangerous response.

The reality that managing the family and home is not compensated has placed women at a disadvantage in our society, a society in which money is essential for survival. Although money has long been important for wealth building, there was a time in history when one could survive on individual production, barter, and social capital.<sup>403</sup> Today, however, money is essential for survival in most cultures and communities. Thus, a woman who does not work for pay is truly dependent on the breadwinner in her life. There are many challenges that result when a society is highly financially oriented. For example, although working exclusively in the labor force for pay has become an alternative for some women, not only do they experience labor force disadvantages, it is an option that has significant implications for individual families.<sup>404</sup>

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401. See Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 *CARDOZO L. REV.* 519 (2010) (examining the benefits and disadvantages of lethality assessment).

402. Comments by Professor Judy Ritter, *Faculty Workshop: Works in Progress* held at Widener University School of Law (Feb. 21, 2013).

403. See DEBORAH L. PRICE, *MONEY MAGIC* 19–20 (2003). Price explains:

From the beginning of recorded history, human beings exchanged goods and services as a means of survival . . . This barter of one thing for another, however, had a very different energy from the exchange of money for goods. Early commerce created community out of necessity. People had little choice but to become interdependent, relying on one another for basic needs and survival. Money altered this reality and changed human experience in ways that were inconceivable before its invention. As people began to rely on one another less and less, the experience of community diminished—although we still long for it. Once money was in widespread use, the needs and desires of human beings changed dramatically, and they have grown more complex and challenging ever since.

*Id.*

404. Clearly, working mothers make an important contribution to the family economy, serve as positive role models, and pose no danger to childhood development. For some families, however, the inflexibility and stress that comes from the employment of both parents may be less conducive to their particular family structure. The choice is as individual as each and every family. Yet in our economic society, women who remain outside the paid labor force, a decision which is either made jointly with or solely by the men in their lives, may be seriously disadvantaged if the relationship subsequently ends.



Economic stability may be achieved in three primary ways: (1) earned income; (2) income sharing with other family members; and (3) social welfare.<sup>405</sup> As we have seen, the first pathway to financial stability, earned income, presents challenges for women generally and women who are battered in particular.<sup>406</sup> Not only do women struggle due to a history of inequality, those that are battered may face serious risks associated with their labor force entry.<sup>407</sup> The second pathway, income sharing through batterer mandated support, presents potential safety risks and significant enforcement challenges.<sup>408</sup> The third pathway, government support, provides that greatest promise of financial stability while posing modest risk of harm. Protective measures to reduce the occurrence of physical violence and threats of harm, coupled with social welfare, may be the key to allowing women to exit the abusive relationship, focus on recovery, build their employment skills, and work toward financial independence.

Race and gender matter when it comes to the likelihood that U.S. government programs will provide resources, with African American women faring the worst. Research shows that while white families have been “boosted out of poverty” at a rate of approximately fifty-one percent, the rate for black single mothers is only about seven percent.<sup>409</sup> The U.S., in fact, is the leader in “single-parent poverty.”<sup>410</sup> Whereas, income transfer programs in countries such as Canada, France, the U.K., Sweden, and the Netherlands are much more successful at helping lift single-parent families out of poverty.<sup>411</sup>

Welfare reform in the U.S. has made it even more difficult for women to obtain the support they need to free themselves from poverty.<sup>412</sup> In 1996, through the Personal Responsibility Act (PRA), Congress replaced Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF), creating new work requirements and placing time limitations on the lifetime benefits needy individuals may obtain.<sup>413</sup> These work requirements,

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405. See ALBELDA & TILLY, *supra* note 339, at 2 (“Aside from the few born to wealth, people in this country get their income from three main sources: sharing the income of other family members, earning income themselves in the labor market, and receiving income from the government.”).

406. See *supra* Part I.

407. See *supra* Part IV.B.

408. See *supra* Part IV.A.

409. See ALBELDA & TILLY, *supra* note 339, at 83.

410. *Id.* at 85.

411. *Id.* at 84–85.

412. *Id.* at 127–28.

413. BRUSH, *supra* note 181, at 35 (detailing the welfare reforms of 1996). For an in depth consideration of welfare reform, see also ALBELDA & TILLY, *supra* note 339, at 122–28.

in particular, create a host of problems for women who need to seek safety and stability first, with paid employment to follow once protections are afforded. In addition, paid labor alone is unlikely to provide the level of income necessary to enable a woman who is exiting an abusive relationship to support herself and her children given her level of education or work history.<sup>414</sup>

The sixty-month cap on lifetime benefits also creates difficulties. Experts suggest that it may take a woman in an abusive relationship five or more attempts to successfully extract herself from a violent relationship.<sup>415</sup> Because separation is one of the most dangerous times for a survivor of domestic violence,<sup>416</sup> a battered woman may reconcile with her abuser to ward off a risk of physical injury or in response to a threat of harm. As a result, a woman who is battered may need to seek government benefits more frequently and in excess of the sixty month limit over her lifetime, given the multiple challenges she faces exiting the abusive relationship.

The Family Violence Option (FVO) pursuant to the Violence Against Women Act (VAWA), was created with an eye toward the particular needs of women who are battered. The FVO allows for waivers from TANF time limitations and work requirements for survivors of intimate partner violence.<sup>417</sup> The work requirement waiver, in particular, provides woman exiting the abusive relationship with the opportunity to focus on the needs of her children, put in place safety measures, and start the healing process (both emotionally and physically) before she enters the paid labor force.

A waiver pursuant to FVO, however, is not an automatic guarantee for a battered woman. First, she must be aware of this waiver option,<sup>418</sup> and second, she must be willing to disclose the fact that she has suffered abuse at the hands of her batterer to her welfare workers.<sup>419</sup>

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414. ALBELDA & TILLY, *supra* note 339, at 129 (“[W]ithout substantial training or education, some women will not be able to find jobs at all, let alone jobs that pay a living wage.”).

415. *People v. Basulto*, No. B1599939, 2003 WL 22456800, at \*4 n.3 (Cal. Ct. App. Oct. 30, 2003) (quoting the testimony of Jeri Darr, domestic violence expert witness).

416. See Sharon L. Gold, *Why Are Victims of Domestic Violence Still Dying at the Hands of Their Abusers? Filling the Gap in State Domestic Violence Gun Laws*, 91 KY. L.J. 935, 940 (2002) (maintaining that batterers are more likely to increase their level of dangerous behavior after the victim leaves in an effort to regain their power over her).

417. BRUSH, *supra* note 181, at 41.

418. Cole & Buel, *supra* note 245, at 316 (“[I]n many instances TANF applicants and recipients are not told or do not understand that they may get special assistance if domestic violence poses a safety risk and an employment barrier.”).

419. *Id.* at 309.

## CONCLUSION

*It is men who stay . . . .*<sup>420</sup>

Although there is no single reason why intimate partner violent relationships endure, it is clear that batterers are able maintain control over their victims due, in large part, to the economic insecurity of women who are abused. Economic dependence is the link that binds a woman to her abuser, drawing her in over and over again; it is, in effect, one of the best predictors of continuing violence once the abuse begins. Financial insecurity increases the danger levels, limits avenues of escape, and reduces the likelihood that a survivor of intimate partner violence, once liberated, will remain free from her abuser.

The present state of our economy suggests that the intersection between financial inequality and intimate partner violence poses significant risks to women who are abused. Studies suggest that the economic crisis may be the cause of both increased conflict within the intimate relationship, as well as a rise in the number of women seeking services. Because this problem is complex and extensive, the solution must be comprehensive.

Our response must take into consideration the economic implications of intimate partner violence and respond with economic solutions. This approach must be comprehensive, including reform within our legal system, governmental programs, and labor industry. Because paid labor alone will not solve the problem, our legal system must improve batterer-mandated support obligations, as well as court enforcement of those orders. At the same time, social welfare programs must be strengthened to appropriately meet the needs of battered women and their children and to end the cycle of violence fueled by resource control, male-power, and abuse.

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<sup>420</sup>. See STARK, *supra* note 1, at 130 (answering his own question posed at the outset of this piece).