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Gender Violence as a Penalty of Poverty

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Publication: *University of Miami Inter-American Law Review*

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Gender Violence as a Penalty of Poverty

Deborah M. Weissman*

The matter of gender violence, including intimate partner violence (IPV), has long been categorized as a particularly egregious crime. The consequences of IPV are profound and affect all members of the household, family members near and far, and the communities where they live. Gender violence impacts the national economy. Costs accrue to workplaces, health care institutions, and encumber local and state coffers. Survivors are deprived of income, property, and economic stability: conditions that often endure beyond periods of physical injuries. Offenders also experience economic hardship as a result of involvement with the legal system. They often face significant obstacles when seeking housing and employment and encounter other economic difficulties due to their legal status. These circumstances interfere with the tasks of mitigating gender violence.

Economic difficulties are not only after-the-fact-occurrences. Decades of research demonstrate causal relationships between poverty, economic strain, and inequality, on the one hand, and survivor status, on the other. Moreover, studies confirm that economic instability contributes to the very factors that often culminate in offenders' transgressions. Notwithstanding the IPV discourse that recognizes the entanglement between structural economic conditions and consequences to families and communities, too little economic support either on the front end or the back has been allocated to address these issues.

This essay will address the various economic factors related to survivors and offenders. It critically assesses the ways in

which the responses to IPV insufficiently acknowledge economic concerns as a function of a neoliberal economic system that fails to support meaningful social change. It offers a brief comparative review of circumstances in Ciudad Juárez, Mexico following the signing of the North American Free Trade Agreement and a hyped-up period of economic liberalization and free trade with a model to address gender violence developed in Cuba after the period of Cuba's post 1959 revolution through the first decade of the twenty-first century based on a political economy built upon principles of social justice and gender equality. These disparate economic circumstances illustrate the ways in which political economies contribute to or mitigate gender violence.

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INTRODUCTION

Intimate partner violence (IPV) has long been categorized as a particularly egregious act.¹ It has also appropriately been identified as an issue embedded in economic structures and systems. Notwithstanding that the circumstances of IPV are related to a political economy that fails to support families in crisis, mainstream approaches to gender violence have assumed paradigmatic orthodoxy that uniformly ignores economic systems and structures. The failure to recognize economic factors that act to undermine the agency of survivors and that contribute to the transgressive behaviors has facilitated the ascendancy of oft–failed and often repeated “remedies”—and nowhere with greater harm than remedies that rely on criminal law responses.

Gender violence affects the national economy—a finding made evident during four years of Congressional hearings in support of the enactment of the Violence Against Women Act of 1994.² Costs

*Reef C. Ivey Distinguished Professor of Law, University of North Carolina School of Law. The author would like to thank the organizers of the Gender Justice and Human Rights Symposium: Holistic Approaches to Gender Violence at the University of Miami, Denisse Córdova Montes, Donna Coker, and participants on the panel, Protecting, Supporting, and Engaging Survivors of Gender-Based Violence. I am also thankful to Louis A. Pérez, Jr. for his thoughtful comments and suggestions.

¹See generally Julie Goldscheid, *Gender Neutrality and the “Violence Against Women” Frame*, 5 U. MIA. RACE & SOC. JUST. L. REV. 307, 322-23 (2015). (using the terms “intimate partner violence (IPV),” also often referred to as “domestic violence,” “gender violence,” and “family violence.” For a review of the benefits and weaknesses of these terms, and the importance of avoiding the imposition of a gendered frame on violence that occurs in intimate relationships. These terms endeavor to refer to abuses based on “a focus on the gendered impact of abuse without inscribing the problem as tied to women alone.”).

² Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. (1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.) [hereinafter VAWA or the Act]. See generally Deborah M. Weissman, *Gender Based Violence as Judicial Anomaly: Between “The Truly National And The Truly*

accrue to workplaces, health care institutions, and encumber local and state coffers.³ As a result of the violence that survivors suffer in relationships, they also experience a loss of income, property, and economic stability: conditions that persist beyond periods of physical injuries.⁴ Offenders also suffer significant economic hardships following criminal or civil claims lodged against them for their harmful behavior. They often face overwhelming obstacles when seeking housing and employment and encounter other economic difficulties related to their legal status—all factors that undermine desistance efforts and the goals to mitigate domestic violence.⁵

Although it has been well-established that economic difficulties result from IPV, less attention has been paid to the ways that economic factors contribute to the problem in the first place. Notwithstanding the frequently-stated position that all women are at a “universal risk” of IPV, as scholars have noted, “the suggestion that domestic violence affects ‘every person, across race, class, nationality, and religious lines’ equally is ‘not only a token attempt at inclusion of diverse perspectives but also evidence of sloppy research and theory building.’”⁶ These tropes ignore the impact of poverty on households and the circumstances of most IPV victims who are poor and disproportionately from minority communities that suffer discrimination and widening gaps of economic inequality.⁷ The “universal

Local”, 42 B.C. L. REV. 1081, n. 3 (2001) (citing to the various Senate and House committee hearings).

³ *Id.*

⁴ Judy L. Postmus et al., *Economic Abuse as an Invisible Form of Domestic Violence: A Multicountry Review*, TRAUMA, VIOLENCE, AND ABUSE 261-62 (2018).

⁵ For an overview of desistance theories as applied to IPV, see Deborah M. Weissman, *Social Justice as Desistance: Rethinking Approaches to Gender Violence*, AM. UNIV. LAW REV. (forthcoming 2022), <https://papers.ssrn.com/abstract=4068978>.

⁶ Natalie J. Solokoff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, And Gender*, 11 VIOLENCE AGAINST WOMEN 38, 41 (2005) (citing V. Kanuha, *Domestic Violence, Racism and the Battered Women’s Movement in the United States*, 34, 40 in FUTURE INTERVENTIONS WITH BATTERED WOMEN AND THEIR FAMILIES (J. L. Edelson & Z. C. Eisikovits eds. 1996)).

⁷ *Id.* (citing Beth Ritchie, *A Black Feminist Reflection on the Antiviolence Movement*, SIGNS, 25, 1133, 1136 (2000)). See also Zoe Flowers, et al., *Showing Up, How We See, Speak, and Disrupt Racial Inequity Facing Survivors of Domestic and Sexual Violence 2* (2018), https://csaj.org/document-library/REEP_Report_Showing_Up_FINAL.pdf, (noting “women living in poverty are nearly

risk” myth stands in the way of a nuanced understanding of the debilitating socioeconomic forces that insinuate themselves into neighborhoods and households, there to produce chronic stress, uncertainty, and fear—all circumstances that contribute to offenders’ deviant conduct.⁸

Decades of research have documented the causal relationships between poverty and economic inequality, on the one hand, and survivor status, on the other, similarly confirming that economic instability contributes to the factors that often culminate in offenders’ transgressions.⁹ Notwithstanding the research on IPV that recognizes the entanglement between structural economic conditions and family crises, too little economic support either on the front end or the back has been allocated to address these issues. Without consideration of these circumstances, the task of mitigating gender violence is likely to be insufficient and inadequate.

twice as likely to experience domestic violence, and people of color are more likely to live in poverty”).

⁸ Jeffrey Fagan et al., *Social and Ecological Risks of Domestic and Non-domestic Violence Against Women in New York City 5*, 1999-WTVW-0005, NATIONAL INSTITUTE OF JUSTICE, U.S. DEPARTMENT OF JUSTICE (2003) (reviewing the literature that posited that “all women are equally situated within a patriarchal society, and thus equally likely to be victimized”).

⁹ See Rebecca Miles-Doan, *Violence Between Spouses and Intimates: Does Neighborhood Context Matter?*, 77 SOC. FORCES 623, 623-25 (1998); see also Michael L. Benson et al., *Violence in Families: The Intersection of Race, Poverty, and Community Context*, 2 FAMILIES, CRIME, AND CRIM. JUST. 91, 91 (Greer Litton Fox & Michael L. Benson eds., 2000); Gary L. Bowen et al., *Neighborhood Characteristics and Supportive Parenting Among Single Mothers*, in 2 FAMILIES, CRIME, AND CRIM. JUST. 183, 184-85 (Greer Litton Fox & Michael L. Benson eds., 2000); Judy A. Van Wyk et al., *Detangling Individual-, Partner-, and Community-Level Correlates of Partner Violence*, 49 CRIME & DELINQ. 412, 413-14 (2003). A National Institute of Justice study demonstrated the role that different neighborhood conditions (particularly those conditions that relate to poverty and economic stress) play in producing domestic violence. See Greer Litton Fox & Michael Benson, *Household and Neighborhood Contexts of Intimate Partner Violence*, 121 PUB. HEALTH REP. 419, 426 (2006); Greer Litton Fox & Michael Benson, *When Violence Hits Home, How Economics and Neighborhood Play A Role*, 1-6 (2004) <https://www.ncjrs.gov/pdffiles1/nij/205004.pdf>. Jacquelyn Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multi-site Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003) (finding that an offender’s unemployment status was the most significant demographic risk factor related to IPV).

This Article addresses the various economic factors related to IPV survivors and offenders. It critically assesses the ways in which the responses to IPV insufficiently acknowledge economic concerns as a function of a neoliberal economic system that fails to support meaningful social change.¹⁰ It demonstrates that the failure to recognize the economics of gender violence suggests indifference to the individuals and communities affected by this social problem while undermining efforts to address it.

Part I of this Article argues that IPV is a penalty of poverty. It situates IPV within a political economy that shifts the responsibility for matters related to household economic and family well-being from government and employers to individuals and families.¹¹ It considers the economic factors that contribute to IPV and identifies the ways that state policies act to exacerbate the problem while deeming potential solutions to be beyond the reach of government. Part II describes the political economy of intergenerational IPV. Poor families are often at risk for intergenerational violence due to socio-inequality—a fact that has been well-established. Yet as part II demonstrates, families have been expected to bear the burden to interrupt cycles of IPV with few efforts to address the systemic harms that contribute to ongoing family dysfunction. Part III provides an overview of the economic consequences affecting both survivors and offenders. Although the consequences of IPV are multiple and varied, this Part focuses on housing concerns as an example of the law's failure to address the needs of families in crisis. Both survivors and offenders are at risk of housing instability notwithstanding that housing is considered to be fundamental human right. Housing laws meant to protect survivors are insufficient, if not punitive. Offenders have nearly no legal protections to obtain or maintain housing. In both cases, the failure to guarantee stable housing undermines efforts to address IPV. Finally, Part IV offers a brief comparative review of circumstances in Ciudad Juárez, Mexico

¹⁰ For a discussion on neoliberalism, see LPE PROJECT, *Neoliberalism Primer* (Aug. 10, 2020), <https://lpeproject.org/primers/neoliberalism-an-lpe-reading-list-and-introduction/>.

¹¹ Kerry Rittich, *Black Sites: Locating the Family and Family Law in Development*, 58 AM. J. COMP. L. 1023, 1030 (2010) (noting that the family is the “de facto source of economic security”). See generally JACOB HACKER, *THE GREAT RISK SHIFT: THE NEW ECONOMIC INSECURITY AND THE DECLINE OF THE AMERICAN DREAM* (2019).

following the signing of the North American Free Trade Agreement and a hyped-up period of economic liberalization and free trade in accordance with the dictates of the International Monetary Fund — an economic shift that contributed to an epidemic of murders of women.¹² It contrasts those circumstances with a model to address gender violence developed in Cuba after the period of Cuba's post 1959 revolution through the first decade of the twenty-first century. The Cuban approach developed based on a political economy built upon principles of social justice and gender equality.¹³ These disparate economic circumstances illustrate the ways in which political economies contribute to or mitigate gender violence. The changes required to address IPV should be framed as the need to accomplish a political economic restructuring in function of the wellbeing of families and healthy communities generally — issues that extend beyond the problem of IPV.

I. INTIMATE PARTNER VIOLENCE AS PENALTY OF POVERTY

A. Systemic Sources of IPV

As the movement to recognize gender-based violence as an issue of public concern emerged, feminist scholarship has increasingly emphasized patriarchy as a source of domestic violence, that is: as a system of dominance institutionalized in public realms of social practice and legal bias in which men as a group dominate women as a group.¹⁴ The advantage of an explanation that situates gender violence as a socio-cultural condition, as opposed to an individualized circumstance notwithstanding a far more complicated set of factors, contributes to domestic violence. Domestic violence can no longer be explained in terms of patriarchy or as a system independent of the social structures that reinforce the multiple power relationships of daily life. As Gwenn Hunnicutt has explained, there are “least five reasons” why patriarchy is an insufficient frame for explaining IPV:

¹² See *infra* Part IV A.

¹³ See *infra* Part IV B.

¹⁴ Gwenn Hunnicutt, *Varieties of Patriarchy and Violence Against Women: Resurrecting “Patriarchy” as a Theoretical Tool*, 15 VIOLENCE AGAINST WOMEN 553, 553-54 (2009).

(a) The concept simplifies power relations; (b) the term *patriarchy* implies a “false universalism”; (c) the ways in which the concept of patriarchy has been employed have ignored differences among men, casting men instead as a singular group; (d) a theory of patriarchy cannot account for violence by women or men against men; and finally, (e) this concept cannot help us understand why only a few men use violence against women in societies characterized as patriarchal.¹⁵

In addition to the over-reliance on patriarchy as the theoretical frame to explain gender violence, many anti-domestic violence advocates have avoided an economic analysis of this social issue.¹⁶ At least as far back as the second half of the twentieth century, studies have demonstrated that a downward economy resulting in a loss of employment opportunities devastates neighborhoods and creates community characteristics associated with increased violence and rising crime rate.¹⁷ Poverty, high rates of unemployment, and under-served neighborhood foment family instability, and interpersonal crises.¹⁸ Entire households are adversely affected by these

¹⁵ *Id.* at 554.

¹⁶ Joan Meier, Domestic Violence, Character, and Social Change in the Welfare Reform Debate, 19 L. & POL’Y. 205, 208, 223 (1997).

¹⁷ BRIAN PHILLIPS, GLOBAL PRODUCTION AND DOMESTIC DECAY, at xxii, 43, 45 (1998) (noting that the decline in manufacturing employment since the 1950s has produced unemployment, reduction in wages, and relocation of workers and their families, and an increase in crime); JOHN GAVENTA, FROM THE MOUNTAINS TO THE MAQUILADORAS: A CASE STUDY OF CAPITAL FLIGHT AND ITS IMPACT ON WORKERS, (Highlander Research and Education Center, 1989); JOHN RUSSO & SHERRY LEE LINKON, COLLATERAL DAMAGE, IN BEYOND THE RUINS 201, 202, 210-11 (Jefferson Cowie & Joseph Heathcott eds., 2003) (studying the collapse of Youngstown, Ohio in the late 1970s through 1980s and experienced what was called a homicide epidemic and became known as the “murder capital” in the 1990s following the closing of steel plants).

¹⁸ Shelley D. Golden et al., *Troubled Times, Troubled Relationships: How Economic Resources, Gender Beliefs, and Neighborhood Disadvantage Influence Intimate Partner Violence*, 28 J. OF INTERPERSONAL VIOLENCE 2134, 2142 (2013); Michael L Benson et al, *The Correlation between Race and Domestic Violence is Confounded with Community Context*, 51 SOC. PROBS. 326, 334–336(2004); Lisa A. Goodman et al., *When Crises Collide: How Intimate Partner Violence and*

conditions; individuals suffer a variety of symptoms and engage in deviant behaviors, including domestic violence.¹⁹

The loss of community economic footing is often accompanied by a rise in domestic violence.²⁰ Increased rates of IPV are associated with community economic downturn even after controlling for factors such as prior violence and drug abuse.²¹ Survivors unable to provide for themselves and their families report IPV at a greater rate than their counterparts in conditions of economic stability.²² This is particularly true for racial minorities more likely to experience poverty and economic insecurity due to structural discrimination.²³ In sum, there is no meaningful way to separate out economic strain and insecurity from IPV.

B. *State Economic Policies that Exacerbate the Risks of IPV*

Although the state endeavors to address IPV, it does so primarily within the realm of the carceral state, which not only fails to address the economic determinants of the problem, but also exacerbates

Poverty Intersect to Shape Women's Mental Health and Coping?, 10 TRAUMA, VIOLENCE, & ABUSE 306, 308–09 (2009).

¹⁹ See Phillips, *supra* note 17, at 107-08 (noting the strain on workers' marriages and families); Gaventa, *supra* note 17, at 49-50; Laurie Mercier, *Remembering and Redefining Deindustrialized Youngstown*, 55 AM. Q. 315, 320 (2003) (noting that domestic violence rates rose in Youngstown after the demise of steel plants).

²⁰ Claire Kelling, *Modeling the Social and Spatial Proximity of Crime: Domestic and Sexual Violence Across Neighborhoods*, 37 J. L. OF QUANT. CRIMINOLOGY 481, 484-485 (2021); see Jennie E. Brand, *The Far-Reaching Impact of Job Loss and Unemployment*, 41 ANN. REV. SOCIO. 359, 370 (describing the serious mental health issues associated with job loss that affects family and community relations); see also Michael L. Benson et al., *Neighborhood Disadvantage, Individual Economic Distress, and Violence Against Women in Intimate Relationships*, 19 J. QUANT. CRIMINOLOGY 207, 210 (2003).

²¹ *Id.* at 210.

²² Matthew J. Breiding et al., *Economic Insecurity and Intimate Partner and Sexual Violence Victimization*, 53 AM. J. OF PREVENTIVE MED. 457, 460 (Oct. 2017); Golden et al., *supra* note 18, at 2142.

²³ See *supra* note 7; Tara E. Sutton et al., *Racial Discrimination as a Risk Factor for African American Men's Physical Partner Violence: A Longitudinal Test of Mediators and Moderators*, 26 VIOLENCE AGAINST WOMEN 164, 165 (2020); see also Robert Hampton, et al., *Domestic Violence in the African American Community: An Analysis of Social and Structural Factors* 9 VIOLENCE AGAINST WOMEN 533, 538 (2003).

them.²⁴ Reliance on the criminal legal system tends to foreclose the possibility of advancing socioeconomic rights.²⁵ As Bernard Harcourt explains:

The argument for more severe law and order is joined at the hip with the argument for limited government intervention elsewhere: the legitimacy and competence in the government in the field of crime and punishment goes hand in hand with government incompetence when it comes to “Government jobs, Government housing, Government welfare.”²⁶

Or as Harcourt has stated otherwise, “law and order is joined at the hip with the argument for limited government intervention elsewhere.”²⁷

²⁴ There is an abundance of literature that critiques the reliance of the criminal legal system as remedy for IPV; this article subscribes to those critiques. For articles and books that discuss the harm occasioned by criminal justice system responses to gender violence, see MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 47 (rev'd ed. 2012); MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* 78 (2006); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241, 1257 (1991); Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 *N.Y.U. REV. L. & SOC. CHANGE* 281, 287 (1997); Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 *HARV. J.L. & GENDER* 53, 54-55 (2017); Alexandra Grant, *Intersectional Discrimination in U Visa Certification Denials: An Irremediable Violation of Equal Protection?* 3 *COLUM. J. RACE & L.* 253, 262 (2013); Radha Vishnuvajjala, *Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent*, 32 *B.C. J. L. & SOC. JUST.* 185, 208-09 (2012); See Deborah M. Weissman, *The Personal Is Political-and Economic: Rethinking Domestic Violence*, 2007 *BYU L. REV.* 387, 401 (2007); Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 *BUFF. CRIM. L. REV.* 801, 852-54 (2001).

²⁵ Jeremy Waldron, *Socioeconomic Rights and Theories of Justice*, 48 *SAN. DIEGO L. REV.* 773, 775 (2011) (noting that some theories of justice appear to be hostile to socioeconomic rights).

²⁶ BERNARD E. HARCOURT, *THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER* 204 (Harvard University Press 2011).

²⁷ *Id.* at 204.

1. The Political Economy of State Support for Families

The failure of the state to intervene in the relationship between poverty and IPV victimhood is made evident by its welfare policies. The U.S. welfare state has been aptly described as stingy and punitive.²⁸ It has long operated in the realm of a political economy of so called cost-effectiveness based on a neoliberal ideology that privileges the market as the optimum means for the distribution of goods and services over government assistance.²⁹ In fact, the responsibility to provide for basic subsistence needs has fallen to the individual, kinship systems, or charities.³⁰ This is especially evident since the 1996 enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) which governs welfare benefits to families.³¹ The federal “welfare reform” statute eliminated guarantees of government benefits and instead allocated funds to state block grants to administer Temporary Assistance to Needy Families (“TANF”).³² PRWORA imposed new conditions including time limits that discharge recipients from welfare rolls, whether or not they are prepared for employment and imposed work requirements in exchange for meager cash assistance.³³ While PRWORA diminished resources for poor families, it generated significant profits for private firms contracted by some states to administer the mandatory work programs.³⁴

PRWORA not only deploys an economic program that favors the market for family survival, it also disproportionately disfavors

²⁸ See generally SPENCER HEADWORTH, PUNITIVE ADVERSARIALISM IN PUBLIC ASSISTANCE 3 (2021) (describing the punitive structures of welfare that institutionalize surveillance, investigation, and punishments as part of welfare’s administrative bureaucracy).

²⁹ See Bob Jessup, *Liberalism, Neoliberalism, and Urban Governance: A State-Theoretical Perspective*, 34 ANTIPODE 452, 453-54 (2002).

³⁰ See Hacker, *supra* note 11; see also Maxine Eichner, *The Privatized American Family*, 93 NOTRE DAME L. REV. 213, 214 (2017).

³¹ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 110 Stat. 2105 (1996) (codified as amended at scattered sections of U.S.C.).

³² GENE FALK, CONG. RCH. SERV. THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT: A PRIMER ON TANF FINANCING AND FEDERAL REQUIREMENTS 1, 2 (2017).

³³ *Id.* at 2.

³⁴ See Joel Handler, *Reforming/Deforming Welfare*, 4 NEW LEFT REV. 114, 134 (2000).

poor women who may have little options but to establish or remain in partnerships with offenders in order to subsist. Studies have documented the importance of welfare benefits for domestic violence victims, many of who have relied on public support as a temporary safety net to secure a bare minimum level of economic autonomy to enable them to avoid or escape from abusive relationships.³⁵ PRWORA's statutory changes punish IPV victims dependent on the state safety net due to circumstances they may not control.³⁶ Survivors are now required to work in order to receive benefits, even when their safety may be endangered.³⁷ IPV victims who may have

³⁵ MIMI ABRAMOWITZ, REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT 355 (1988); Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL'Y REV. 369, 388 (1998); Jody Raphael, *Welfare Reform: Prescription for Abuse? A Report on New Research Studies Documenting the Relationship of Domestic Violence and Welfare*, 19 LAW & POL'Y 123, 125 (1997); see also Jody Raphael, *Domestic Violence and Welfare Receipt: Toward a New Feminist Theory of Welfare Dependency*, 19 HARV. WOMEN'S L.J. 201 (1996); Symposium, *A Leadership Summit: The Link Between Violence and Poverty in the Lives of Women and Their Children*, 3 GEO. J. FIGHTING POVERTY 5, 8 (1995); Stacy Brustin & Lisa Vollendorf Martin, *Paved with Good Intentions: Unintended Consequences of Federal Proposals to Integrate Child Support and Parenting Time*, 48 IND. L. REV. 803, 837 (2015).

³⁶ Rachel J. Gallagher, *Welfare Reform's Inadequate Implementation of the Family Violence Option: Exploring the Dual Oppression of Poor Domestic Violence Victims*, 19 AM. U. J. GENDER SOC. POL'Y. & L. 987, 997 (2011) (noting various factors including lack of childcare, continued abuse, and more that prevents many survivors from obtaining work).

³⁷ See Pub. L. No. 104-193, § 101, 110 Stat. 2105, 2110-12; see also Brief for Sixty-Six Organizations Serving Domestic Violence Survivors as Amici Curiae in Support of Respondents, *Anderson v. Roe*, 524 U.S. 982 (1998) (No. 98-97), 1998 WL 847246, at 11-3 (at least three quarters of welfare recipients were IPV survivors). Although PRWORA's findings led to what is known as the Family Violence Option ("FVO") which permits, but does not mandate, state-by-state exemptions for domestic violence victims to receive benefits notwithstanding TANF's time limits and work requirements, studies consistently demonstrate the failure of states to meaningfully implement this option and grant waivers. 42 U.S.C. § 602(a)(7) (2014); See Jody Raphael, *The Family Violence Option: An Early Assessment*, 5 VIOLENCE AGAINST WOMEN 449, 451-52 (1999); 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, 479 (2003); 42 U.S.C. § 602(a)(7)(A)(i)-(ii) (2014); see Rachel J. Gallagher, *Welfare Reform's Inadequate Implementation of the Family Violence Option: Exploring the Dual*

little or no control over their readiness to enter the job market within TANF's time frames are terminated from benefits and thus may have no choice but to accept the TANF-sponsored low-wage, dead-end jobs without any state support.³⁸ These circumstances enhance vulnerability and reduce agency for women who may have little choice but to form, or remain, in relationships with abusive persons.

Congress disregarded its own findings made during PRWORA's legislative process. Those findings established that the great majority of welfare recipients were victims of IPV.³⁹ Congress ignored its findings just four years prior during the VAWA legislative process, which demonstrated the pervasive economic circumstances related to IPV.⁴⁰ In sum, welfare reform has created greater economic obstacles for poor women. It deprived them of agency to determine how to best meet their needs without entering into abusive relationships as a consequence of the trappings of poverty and economic instability.

PRWORA also requires survivors who are welfare recipients to cooperate with the state to obtain child support from noncustodial parents, most often fathers.⁴¹ The failure of the survivor to assist in seeking reimbursement to the state for welfare payments may result in economic sanctions.⁴² In this way, the state has shifted its burden

Oppression of Poor Domestic Violence Victims, 19 AM. U. J. GENDER SOC. POL'Y & L. 987, 1003-04 (2011).

³⁸ Mary C. Noonan & Colleen M. Heflin, *Does Welfare Participation Affect Women's Wages?*, 86 SOC. SCI. Q. 1123, 1126 (2005); Mark Vermillion & Jaime Burns, *Women and Low-Wage Work*, SOCIOLOGISTS FOR WOMEN IN SOC'Y. (Dec. 15, 2005), http://www.socwomen.org/wp-content/uploads/2010/05/fact_12-2005-lowwage.pdf.

³⁹ See Pub. L. No. 104-193, § 101, 110 Stat. 2105, 2110-12; see also Brief for Sixty-Six Organizations Serving Domestic Violence Survivors as Amici Curiae in Support of Respondents, *supra* note 37.

⁴⁰ Weissman, *supra* note 2, at 1081-82.

⁴¹ 42 U.S.C. § 608(a)(2)-(3) (requiring states to penalize recipients if they fail to cooperate in establishing paternity and child support orders or who do not assign to the state rights to child support).

⁴² *Id.* See generally Stacy Brustin & Lisa Vollendorf Martin, *Paved with Good Intentions: Unintended Consequences of Federal Proposals to Integrate Child Support and Parenting Time*, 48 IND. L. REV. 803 (2015); Ann Cammett, *Expanding Collateral Sanctions: The Hidden Costs of Aggressive Child Support Enforcement Against Incarcerated Parents*, 13 GEO. J. ON POVERTY L. & POL'Y 313 (2006); GWENDOLYN MINK, *WELFARE'S END* 72-73 (Cornell University Press 2018) (noting that TANF no longer establishes national standards for "good

to support families without sufficient income to families themselves. As Melinda Cooper has written,

By diverting a substantial portion of the federal welfare budget to the task of extracting child support from fathers, welfare reform served to remind women that an individual man, not the state, was ultimately responsible for their economic security. Unless a woman could assume “personal responsibility” for her economic fate, she would have to accept her condition of economic dependence on an absent father or substitute husband.⁴³

Yet many custodial parent survivors seek to avoid the child support cooperation requirement in order to protect the noncustodial parent, particularly because they may rely on the informal support received from the other parent.⁴⁴ Just as importantly, many poor noncustodial parents are often assessed child support payments that they cannot realistically pay. In fact, as Tonya Brito has written, “[t]he poorest parents have disproportionately high (relative to income) monthly child support obligations.”⁴⁵ These circumstances may result in the suspension of offenders’ driver’s and occupational licenses, additional fines, and financial and other penalties, thus undermining their capacity to earn an income and provide assistance to their children.⁴⁶ Moreover, states impose interest on unpaid child

cause” but rather leaves it to the determination of the states and the emergence of tougher new standards).

⁴³ MELINDA COOPER, *FAMILY VALUES: BETWEEN NEOLIBERALISM AND THE NEW SOCIAL CONSERVATISM* 68 (2017).

⁴⁴ Studies also demonstrate that child support enforcement requirements may endanger victims of domestic violence who may need to avoid any contact with an abusive parent, an outcome likely to occur as a result of the child support system. See June Gibbs Brown, *Client Cooperation with Child Support Enforcement: Challenges and Strategies to Improvement*, 6 (2000). <https://oig.hhs.gov/oei/reports/oei-06-98-00041.pdf>; see also Timothy Casey et al., *Not Enough: What TANF Offers Family Violence Victims* 17-18, L. MOMENTUM (2010), <http://www.legalmomentum.org/sites/default/files/reports/not-enough-what-tanf-offers.pdf>.

⁴⁵ Tonya L. Brito, *The Child Support Debt Bubble*, 9 U.C. IRVINE L. REV. 953, 954 (2019).

⁴⁶ *Id.* at 954 (“noncustodial parents who had no reported income or annual incomes of less than \$10,000 owed 70% of the accumulated debt”); Ann Cammett,

support resulting in growing debt.⁴⁷ These consequences not only further reduce one's ability to pay child support, but create high levels of economic strain by trapping parents in growing debt with the concomitant fear of additional punitive responses—all factors known to contribute to IPV.

2. The Privatization of Other Forms of State Support for Families

In addition to punitive forms of state support for families, decisions based on a political economy that privileges the market undermines families in crisis in other ways. In the same year of the enactment of PRWORA, Congress slashed the budgets of legal services programs that handle most domestic violence cases, further restricted the nature of the legal work, and rendered certain categories of the poor ineligible for any type of assistance.⁴⁸ All done in the name of calling for the reinvigoration of the principles of personal responsibility and support for the private law firm market.⁴⁹ Legal services opponents advocated a return to charitable programs and suggested that market-driven private legal services were adequate to meet the needs of the poor.⁵⁰

These cuts and restrictions act to prevent survivors of abuse from obtaining legal services vital to their safety, notwithstanding the benefits of civil legal services, particularly for women who have

Expanding Collateral Sanctions: The Hidden Costs of Aggressive Child Support Enforcement Against Incarcerated Parents, 13 GEO. J. ON POVERTY L. & POL'Y 313, 320 (2006).

⁴⁷ Brito, *supra* note 45, at 978.

⁴⁸ Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1321-59 (1996).

⁴⁹ 141 CONG. REC. S8945-04 (June 22, 1995) (statement of Sen. Helms), 142 Cong. Rec. S8841, at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjby9Lu8fj3AhViTd8KHXjaDWwQFnoE-CAYQAQ&url=https%3A%2F%2Fwww.govinfo.gov%2Fcontent%2Fpkg%2FCREC-1995-06-22%2Fpdf%2FCREC-1995-06-22-senate.pdf&usg=AOvVaw1INiFXHdAWqlSGAx1eQyDD>

⁵⁰ 142 CONG. REC. 18,627 (July, 23 1996) (statement of Rep. Ballenger) 142 Cong. Rec. H8099 (noting the existence of "sufficient private alternatives"), <https://www.congress.gov/congressional-record/1996/07/23/house-section/article/H8149-4>.

experienced IPV.⁵¹ The loss of funding also limits representation of offenders who have suffered wrongful housing evictions, denials of unemployment and other income maintenance benefits.⁵² The inability to protect rights related to core subsistence issues limits survivors' ability to establish safe homes and contributes to the very type of household stress that produces family violence. Indeed, the privatization of once-public services that were intended to support families has exacerbated the conditions that give rise to IPV.

3. Private Sector Contributions to IPV: Beyond the Reach of Public Remedy

In support of an unfettered market, the U.S. political economy fails to address a myriad of other economic factors that contribute to IPV—factors that are often considered unrelated to family well-being notwithstanding evidence to the contrary.⁵³ Employers are not mandated to offer paid family leave although the economic challenges and household tensions that arise when a parent must take time off from work for childcare.⁵⁴ Nor are employers required to provide health insurance, although unattended health issues and mounting medical costs create stress resulting in dysfunctional family dynamics including IPV. Indeed, federal hands-off policies have resulted in a rapid decline in employer-supported health insurance.⁵⁵ No laws prevent factories from declaring bankruptcy, closing, or relocating so that owners may augment their profits although studies have documented the deleterious consequences of community economic deterioration that encroach within families and

⁵¹ See James Teufel et al., *Income and Poverty Status Among Women Experiencing Intimate Partner Violence: A Positive Social Return on Investment from Civil Legal Aid Services*, 55 L. & SOC'Y REV. 405 (2021).

⁵² *The Justice Gap Executive Summary*, LEGAL SERVICES CORPORATION (2022) (noting that poor people “do not get any or enough legal help for 92% of the problems that have had a substantial impact on them”) <https://justicegap.lsc.gov/resource/executive-summary/> (last visited Oct. 9, 2022).

⁵³ See *supra* notes 17-19 and accompanying text.

⁵⁴ Jacob S. Hatcher, *Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States*, 98 AM. POLI. SCI. REV. 243, 251 (2004).

⁵⁵ *Id.* at 252.

households.⁵⁶ These decisions have long been considered within the logic of the market and beyond the reach of public remedy.⁵⁷ Yet ethnographers have chronicled the impact of the loss of jobs and employment opportunities, wherein workers acknowledged worsening relationships with intimate partners, including the commission of acts of violence.⁵⁸ Indeed, as social bonds and networks weaken, the risk of violent crime—including domestic violence—appreciates considerably.⁵⁹ Moreover tax revenues have declined and social services are diminished, even as needs have increased.⁶⁰ These are some of the very structural issues that create the conditions that give rise to IPV.

II. THE POLITICAL ECONOMY OF INTERGENERATIONAL IPV

A. *Adverse Childhood Experiences and their Sequelae*

Longitudinal studies examining the effect of IPV on children indicate that children exposed to home violence encountered difficulty in sustaining healthy interpersonal relationships.⁶¹ Meta-analyses,

⁵⁶ The Worker Adjustment and Retraining Notification Act (WARN) provides de minimis protections on behalf of workers laid off as a result of plant closings. Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2107(a); 20 C.F.R. §§ 639.1-639.10 (*requiring employers who have 100 or more full-time employees to provide at least 60 days advance notice of a plant closing or mass layoff*); *See supra* notes 17 and 19. *But see* Jay Lawrence Westbrook, *Equity in Bankruptcy Courts: Public Priorities*, 94 AM. BANKR. L.J. 203, 204 (2020) (proposing that courts in Chapter 11 bankruptcy matters include[e] equitable consideration of the interests of society as a whole when interpreting and applying the Bankruptcy Code).

⁵⁷ OREN M. LEVIN-WALDMAN, *PLANT CLOSURE, REGULATION, AND LIBERALISM*, 145-47 (1992) (questioning whether plant closing decisions can remain in the private realm given their public consequences).

⁵⁸ *See supra* notes 17 and 19.

⁵⁹ Greer Litton Fox et al., *Economic Distress and Intimate Violence: Testing Family Stress and Resource Theories*, 64 J. OF FAM. AND MARRIAGE 793, 798 (2002); Miles-Doan, *supra* note 9, at 623 (describing the importance of community as a means of insulating or protecting people from crime).

⁶⁰ Don Terry, *Where Work Disappears and Dreams Die*, THE AM. PROSPECT 58, 59 (July 2, 2012), <https://prospect.org/economy/work-disappears-dreams-die/>.

⁶¹ *See* Peter G. Jaffe, C. Crook & Nicolas Bala, *Summary of "Matching Parenting Arrangements to Child Custody Disputes in Family Violence Cases*, Discussion Paper for Dept. of Justice, Ontario, Canada (2005) (excerpted in NANCY K.D.

including those by the Center for Disease Control (CDC) researchers, have ascertained that exposure to IPV constitutes adverse childhood experiences (ACEs) often associated with “emotional and physical health problems in adulthood.”⁶² The CDC identifies a range of health-related problems and socio-economic challenges as the sequelae of ACEs.⁶³ Long-term harms include diminished cognitive functioning and behavioral problems.⁶⁴ These studies have addressed how ACEs relates to the “intergenerational transmission of domestic violence as the child grows into adulthood and has a family of his or her own.”⁶⁵

Behavioral modeling is a type of intergenerational transmission whereby children who witness or experience violence engage in abusive behaviors themselves and may develop future psychopathology. A study [] found that males who witness domestic violence in childhood tend to commit domestic violence later on in their lives in the same way that males who were abused during their own childhoods tend to abuse children in adulthood and commit more acts of general violence. Similarly, offenders of dating violence tend to have a history of witnessing parental violence.⁶⁶

A number of agencies working with individuals who commit transgressive acts have begun to implement ACEs evaluations and have found that children who experience ACEs are themselves at

LEMON, DOMESTIC VIOLENCE LAW 344, 346-347 (5th ed. 2018)); Olivia Harrison, *Statistically Speaking: The Long-Term Effects of Domestic Violence on Children*, 41 CHILD. LEGAL RTS. J. 63 (2021).

⁶² Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Adverse Childhood Experiences Prevention Strategy*, 2 (2020) [hereinafter CDC Report] https://www.cdc.gov/injury/pdfs/priority/ACEs-Strategic-Plan_Final_508.pdf; Debra Pogrund Stark et al., *Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform*, 26 MICH. J. GENDER & L. 1, 22, 23-24 (2019).

⁶³ See Pogrund Stark, *supra* note 62, at 4.

⁶⁴ Harrison, *supra* note 61, at 63.

⁶⁵ Pogrund Stark, *supra* note 62, at 26.

⁶⁶ *Id.* at 25-6.

risk of committing acts of violence.⁶⁷ Further, studies have suggested that girls exposed to IPV are more likely to be victims of domestic violence as they form adult relationships.⁶⁸

B. ACES and Systemic Harms

ACEs include more than the experience of household violence. An understanding of intergenerational poverty and violence must be included in a political economic analysis that rejects the notion of low-income people “trapped in a self-perpetuating ‘culture of poverty,’ a web of pathological behaviors that, when passed down to their children, reproduced intergenerational cycles of poverty and hindered economic advancement.”⁶⁹ “Historical and ongoing traumas due to systemic racism and discrimination or the impacts of multigenerational poverty resulting from limited educational and economic opportunities,” as the CDC observed, “intersect and exacerbate the experience of other ACEs, leading to disproportionate effects in certain populations.”⁷⁰ As one journalist who studies the economy and families has reported, “[c]hild poverty also doesn’t fall evenly across demographics: 71 percent of poor children are Black, Hispanic or Native American.”⁷¹ That a disproportionate number of households that experience IPV include poor and racial minorities,

⁶⁷ James Garbarino, *ACEs in the Criminal Justice System*, 17 ACAD. PEDIATRICS S32, S32 (2017).

⁶⁸ Julie A. Morley, *A Silver Lining in Domestic Turmoil: A Call for Massachusetts to Adopt the UCCJEA’s Emergency Jurisdiction Provision*, 43 NEW ENG. L. REV. 135, 158 (2008). (“[Victims of] domestic violence are far more likely to become victims themselves”¹); Ali Kunen, *Divorce and Domestic Violence in the United States: A Focus on New York State’s Adoption of No-Fault Legislation and Its Impact on the Incidence of Domestic Violence*, 11 CARDOZO PUB. L. POL’Y & ETHICS J. 353, 374 (2013).

⁶⁹ Johanna Fernández, *The Young Lords: Building Power through Direct Action*, LPE PROJECT, (May 12, 2022), <https://lpeproject.org/blog/the-young-lords-building-power-through-direct-action/> (critiquing the misapplication of Oscar Lewis’ study of poverty in Mexico).

⁷⁰ CDC Report, *supra* note 62, at 2.

⁷¹ Bryce Covert, *We Pay to Keep the Old Out of Poverty. Why Won’t We Do the Same for the Young?*, N.Y. TIMES (May 7, 2022), <https://www.nytimes.com/2022/05/07/opinion/sunday/child-tax-credit-social-security.html>.

suggests a greater risk that children from these families will experience these deleterious outcomes.⁷²

Poverty studies on the well-being of children find that parents who struggle economically experience mental health problems, which also affects their ability to provide the conditions for healthy child development.⁷³ However, policy makers who address concerns related to ACEs minimize structural factors. The burden of ACEs and often the blame is transferred to parents, especially mothers, while systemic issues related to social inequality are ignored.⁷⁴ Proposed methodologies of intervention focus on improving familial and other personal relations. Strategies emphasize individualized therapeutic family intervention to address family dysfunction.⁷⁵ Such approaches are “symptom-focused remedies” wherein “individuals are held accountable for the outcomes of trauma caused by systems.”⁷⁶ Few recommendations address systemic issues, including racism and discrimination, worker exploitation, underfunded schools, lack of affordable housing, and adequate public transportation—all conditions that result in family crises and IPV.⁷⁷

Treating trauma and building resiliency through supportive personal relationships is not without salutary effects, of course.

⁷² Mathilde M. Overbeek, et al., *Risk Factors as Moderators of Recovery During and After Interventions for Children Exposed to Interparental Violence*, 84 AM. J. OF ORTHOPSYCHIATRY 295 (2014) (“Risk usually does not occur alone and children growing up in violent homes are often exposed to more stressors besides IPV, such as poverty and social isolation”) (internal citation omitted).

⁷³ See Clare Huntington, *Early Childhood Development and the Replication of Poverty*, HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY 130, 133, 138 (Ezra Rosser ed., 2019) (describing issues including parents who must work multiple jobs that do not pay a living wage, lack of public transportation, unaffordable and low-quality housing).

⁷⁴ Ruth Müller & Martha Kenney, *A Science of Hope? Tracing Emergent Entanglements between the Biology of Early Life Adversity, Trauma-informed Care, and Restorative Justice*, 46 SCI., TECH., & HUM. VALUES 1230, 1233 (2021).

⁷⁵ Sue White et al., *All the ACEs: A Chaotic Concept for Family Policy and Decision-Making?*, 18 SOC. POL’Y & SOC’Y 457, 458 (2019).

⁷⁶ E. Christi Cunningham, *Traumatized Systems Theory: Accountability for Recurrent Systemic Harm*, 71 CASE W. RES. L. REV. 987, 990 (2021).

⁷⁷ Aditi Srivastav et al., *Exploring Practitioner and Policymaker Perspectives on Public Health Approaches to Address Adverse Childhood Experiences (ACEs) in South Carolina*, 102 CHILD ABUSE & NEGLECT 1, 6-8 (Feb. 2, 2020) (Can.); see MICHAEL K. BROWN, ET AL., *WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY* 155 (2003).

However, research suggests that providing direct economic assistance is better for preventing ACEs.⁷⁸ These findings notwithstanding, the United States is an outlier regarding the limited economic support it provides to families as a means to ameliorate ACEs and their outcomes.⁷⁹ As Clare Huntington has written, state efforts to address systemic conditions affecting families rarely meets household needs as a result of deliberate political decisions and lack of will, often related to “antipathy for poor adults” and a reluctance to offer cash transfers.⁸⁰ The failure to provide adequate economic support to families contravenes “robust research” that demonstrates the benefit of providing resources that include a reduction in criminal behavior.⁸¹ Insufficient resources for families, “on the other hand, leads to ‘quite a profound level of insults in adulthood.’”⁸²

The failure to acknowledge the systemic sources of ACEs and address structural remedies forecloses any possibility of meaningful approaches to individual trauma.⁸³ Just as disturbing, when researchers do acknowledge structural inequality and poverty as contributing factors to ACEs, these issues are nonetheless omitted from proposed interventions in favor of strategies that seem more immediately “realistic.”⁸⁴

⁷⁸ Srivastav et al., *supra* note 77, at 5, 7-8; White, *supra* note 75, at 461-62. Cf. Noa Ben-Asher, *Trauma-Centered Social Justice*, 95 TUL. L. REV. 95, 131-35 (2020) (critiquing trauma-centered responses for their failure to address social injustices in the realm of gender and race).

⁷⁹ See Huntington, *supra* note 73, at 130.

⁸⁰ *Id.* at 142, 149 (describing, for example, inadequate housing and childcare supports); see also Srivastav et al., *supra* note 77, at 8 (suggesting a lack of willingness to call on the State for failing to implement systemic and primary prevention strategies aimed at improving health, housing, and family well-being); see also Zachary Liscow, *Redistribution for Realists*, 107 IOWA L. REV. 495, 556 (2022) (noting that “the public’s political psychology hinders redistribution through taxation”).

⁸¹ Covert, *supra* note 71.

⁸² *Id.*

⁸³ Cunningham, *supra* note 76, at 990.

⁸⁴ Kristin Anderson Moore, et al., *Preventing Violence: A Review of Research, Evaluation, Gaps, and Opportunities*, (Feb. 2015), https://s3.amazonaws.com/fwvcorp/wp-content/uploads/20160121112511/Preventing-Violence_Full-Report.pdf. (“Social and economic disparities are strongly correlated with violence and are malleable; however, we have not focused on these because other interventions seem more realistic.”).

Though ACEs are receiving steady recognition within public health in the U.S., specific policies that promote protective factors to prevent and mitigate ACEs have been limited and fragmented. Most existing state policies are limited to increasing awareness of ACEs. While these efforts are important, they are likely not enough to foment considerable social and environmental changes that promote healthy outcomes for children. Of the few policy actions that have been attempted to address ACEs on the state level, most are resolutions that reinforce statewide commitments to addressing ACEs with no funding or mandates for implementation. There is an urgency to explore comprehensive state-level policy options that more effectively address ACEs through public health programs that promote protective factors.⁸⁵

As one scholar has explained, think tanks that support neoliberal policies state “have implored us to turn away from treating the public realm as a terrain for improvement and change. They have been teaching cynicism about collective action and encouraging instead individual responsibility, personal initiative, and the centrality of private activities” – all tending to produce a troubling outcome:

Something strange and remarkable happens as energies that once belonged to the social sphere are transferred from there to one’s personal life. Not only are collective capacities to solve collective problems weakened, but also the very sense that these problems are *collective* disappears. When individuals become personally responsible for these problems, social pain and its causes are conjured away.⁸⁶

Indeed, self-help cannot be a substitute for addressing structural problems.

⁸⁵ Srivastav et al., *supra* note 77, at 2 (citations omitted).

⁸⁶ Ronald Aronson, *We: Reviving Hope Today*, BOS. REV. (Apr. 25, 2106), <https://bostonreview.net/articles/ronald-aronson-privatization-hope/>

III. PAYING THE PENALTY: THE ECONOMIC CONSEQUENCES OF IPV

The legal discourse that shapes the narratives about gender violence principally identifies physical abuse as the prohibited conduct associated with IPV.⁸⁷ But, as this Article demonstrates, IPV involves other forms of harm. Offenders often subject survivors to economic abuse as a way to diminish their ability to deploy their economic resources.⁸⁸ As a consequence of abuse, a survivor may lose employment or experience low-wage stagnation in the labor market due to an inability to engage productively in the workplace.⁸⁹ One study demonstrated that sixty percent of victims reported loss of employment as a result of IPV and ninety-eight percent reported economic abuse, particularly financial abuse.⁹⁰ Offenders seeking to control their partners might interfere with a victim's access to information about finances, control all decisions with regard to household economics, engage in identity theft, or incur debt through coercive or surreptitious means.⁹¹ The consequences of these forms of

⁸⁷ Megan E. Adams, *Assuring Financial Stability for Survivors of Domestic Violence: A Judicial Remedy for Coerced Debt in New York's Family Courts*, 84 BROOK. L. REV. 1387, 1394 (2019) (noting that "economic abuse as a form of domestic violence has yet to make its way into many states' laws, let alone federal domestic violence statutes"). There are some states that are including course of conduct issues as part of statutory prohibitions. For example, New York state recently included forms of economic abuse as prohibited conduct. N.Y. S.B. 2625. Leg. Sess. 2019-2020 (N.Y. 2019), <https://legislation.nysenate.gov/pdf/bills/2019/S2625>.

⁸⁸ Judy L. Postmus et al., *Economic Abuse as an Invisible Form of Domestic Violence: A Multicountry Review*, TRAUMA, VIOLENCE, AND ABUSE 1, 2 (2018).

⁸⁹ Jody Raphael, *Welfare Reform: Prescription for Abuse? A Report on New Research Studies Documenting the Relationship of Domestic Violence and Welfare*, 19 L. & POL'Y 123, 124 (1997); see also Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411, 412 (2012).

⁹⁰ Sady Doyle, *Why Domestic Violence Is an Economic Issue*, NATION (Sept. 20, 2016), <https://www.thenation.com/article/why-domestic-violence-is-an-economic-issue/>.

⁹¹ See Nicola Sharp-Jeffs, *A Review of Research and Policy on Financial Abuse Within Intimate Partner Relationships*, 7, 8-13 (2015), <http://repository.londonmet.ac.uk/1482/1/Review-of-Research-and-Policy-on-Financial-Abuse.pdf> (describing forms of financial abuse); Postmus et al., *supra* note 88, at 5; see also Jamie Haar, *Women's Work: Economic Security in the Domestic Violence Context*, 31 HOFSTRA LAB. & EMP. L. J. 471, 488 (2014).

IPV affect victim's chances of purchasing or renting a home and obtaining utilities, car and home insurance rates, and employability.⁹² These circumstances impede a survivor's ability to leave an abusive relationship.⁹³ Moreover, the economic consequences of IPV limit opportunities to escape poverty and traps the victim in the very conditions that contributed to their vulnerability to IPV in the first place. To make matters worse, survivors often eligible for victim compensation in the form of financial assistance find themselves unable to navigate through bureaucratic systems and requirements, and ultimately fail at obtaining relief to which they are otherwise entitled.⁹⁴

For purposes of mitigating gender violence, it is not sufficient to limit the assessment of the economic consequences of IPV to those suffered by victims. It is also imperative to scrutinize the economic consequences experienced by individuals who commit acts of IPV and are also subject to enduring economic adversities. Offenders involved in the legal system, whether due to criminal or civil complaints, have a significantly diminished ability to obtain housing and employment.⁹⁵ They accumulate hefty debt due to court fines and fees and additional expenses related to court mandates, including fees for mandated "abuser intervention programs."⁹⁶ An offender's

⁹² See Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 423 (2013) Ctr. For Survivor Agency & Justice, *Guidebook On Consumer & Economic Legal Advocacy For Survivors*, CSAJ, 21 (2017), https://csaj.org/document-library/CSAJ_Guidebook_COMPLETE.pdf.

⁹³ See EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 271-76 (2007).

⁹⁴ See Jessica Persaud, *Fair Access to Victim Compensation Campaign*, COMMON JUSTICE (JAN. 20, 2022), <https://blog.commonjustice.org/blog/we-need-favc>.

⁹⁵ Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*, 5 U. MIA. RACE & SOC. JUST. L. REV. 585, 599-601 (2015); Lorelei Laird, *The Bail Project Pays Defendants' Bail as Part of a Plan to End Money Bail Entirely*, A.B.A. J. (Nov. 1, 2019, 2:40 AM CDT), <https://www.abajournal.com/magazine/article/the-bail-project-pays-defendants-bail-as-part-of-a-plan-to-end-money-bail-entirely>.

⁹⁶ Many offenders are criminally and/or civilly mandated to attend what are commonly known as Abuser Treatment Programs and must pay for orientation, assessment, and classes, with fees that be as much as \$1,000. See Deborah M. Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Laws and Policies*, 2020 UTAH L. REV. 1, 58 (2020).

educational opportunities are often limited as a result of his involvement with the legal system.⁹⁷

The economic penalties borne by offenders has received little attention largely due to their status as the wrongdoers, and thus often deemed unworthy of concern.⁹⁸ There is disagreement among scholars and advocates with regard to offender accountability, of course, and those who seek punitive forms of accountability may question any regard for the circumstances of the person who has committed harm.⁹⁹ But as scholars have observed, “the correlation between victimization and offending is so strong, criminologists have considered that *victims and offenders share similar characteristics*.”¹⁰⁰ Deeming an offender’s economic circumstances unworthy of attention ignores the structural analysis of domestic violence. When an offender is trapped in dire economic straits and impeded from economic improvement—the very factors that contributed to the deviant behavior and that obstruct desistance from further bad acts—there is neither the possibility of mitigating violence or providing justice for survivors.¹⁰¹ These economic-related penalties, as scholars have noted, “have rehabilitation-defeating propensities.”¹⁰²

The categories of economic consequences for both survivor and offender are multiple and varied.¹⁰³ This Part explores the threat of

⁹⁷ Duy Pham et al., *Reconnecting, Realizing & Reimagining Justice* 8 (2020), <https://www.clasp.org/wp-content/uploads/2022/01/2020reconnectingrealizingandreimaginingjustice.pdf>.

⁹⁸ Brittney Chesworth, *Exploring State Policies and Program Practices for Offenders of Intimate Partner Violence*, 61 (2020) <https://cdr.lib.unc.edu/downloads/3197xv856?locale=en>.

⁹⁹ DAVID ALAN SKLANSKY, *A PATTERN OF VIOLENCE: HOW THE LAW CLASSIFIES CRIMES AND WHAT IT MEANS FOR JUSTICE* 145, 147 (2021) (noting that some anti-domestic violence advocates are considered to have “demonized offenders instead, reverting to a dispositional rather than situational understanding of intimate abuse).

¹⁰⁰ Amaia Iratzoqui, *Domestic Violence and the Victim/Offender Overlap Across the Life Course*, 62 INT’L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 2801, 2803 (emphasis added) (reporting that child abuse strongly predicts domestic violence perpetration).

¹⁰¹ Sklansky, *supra* note 99, at 230 (describing “confused thinking” about violence); see Weissman, *supra* note 5.

¹⁰² Kevin R. Reitz, *The Economic Rehabilitation of Offenders: Recommendations of the Model Penal Code (Second)*, 99 MINN. L. REV. 1735, 1743 (2015).

¹⁰³ Survivors and offenders both face significant obstacles when seeking living wage jobs, and experience significant financial distress and credit problems.

the denial of housing as a particular economic consequences that survivors and offenders endure as a result of IPV. Housing is at the “core of so many social, economic, political, physical, and even spiritual aspects of our lives.”¹⁰⁴ The right to housing is embedded in international human rights treaties.¹⁰⁵ Yet there are few effective remedies that would address the political economic factors that contribute to this problem and its relation to IPV. “Solutions” to address the economic aftermath of IPV are either nonexistent or misdirected.

A. Consequences of IPV: Housing Challenges for the Survivor

Housing instability has long been identified among the most significant barriers survivors face when seeking to exit an abusive relationship.¹⁰⁶ A longstanding data point from the U.S. Conference of Mayors describes domestic violence as one of the leading causes of homelessness.¹⁰⁷ Survivors are often denied or evicted from housing as a result of the acts of violence they suffer.¹⁰⁸ As a result of their financial abuse they have suffered, they are likely to have poor credit ratings which diminish their chances of obtaining rental property or a mortgage for purchasing a home.¹⁰⁹ The U.S Department of Housing and Urban Development (HUD) has acknowledged this issue, stating, “Congress has acknowledged that ‘women and

These are just some of the examples of the economic problems that both survivors and offenders must endure. See Weissman, *supra* note 96, at 5-7.

¹⁰⁴ Blair Reeves, *The Road to Home: Fair and Affordable Housing for North Carolina*, 4, <https://carolinaforward.org/wp-content/uploads/2022/02/The-Road-to-Home.pdf> (last visited Oct. 30, 2022).

¹⁰⁵ Eric Tars, *Housing as a Human Right*, NAT’L LOW INCOME HOUSING COAL., 1-15, https://nlihc.org/sites/default/files/AG-2021/01-06_Housing-Human-Right.pdf (reviewing the various international treaties applicable to housing issues) (last visited Oct. 30, 2022).

¹⁰⁶ *The Impact of Safe Housing on Survivors of Domestic Violence*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, https://nnedv.org/spotlight_on/impact-safe-housing-survivors/_Domestic_Violence,_Homelessness,_and_Children’s_Education, NAT’L CTR. FOR HOMELESS EDUCATION, <https://nche.ed.gov/wp-content/uploads/2018/10/domestic.pdf>; *Homelessness in America*, NAT’L COAL. FOR THE HOMELESS, <https://nationalhomeless.org/about-homelessness/>; Littwin,

¹⁰⁷ *Domestic Violence, Homelessness, and Children’s Education*, *supra* note 106.

¹⁰⁸ *Fair Housing and Domestic Violence*, NAT’L HOUS. L. PROJECT, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/fair-housing-and-domestic-violence/>.

¹⁰⁹ Littwin, *supra* note 92, at 366-67; Lisa V. Martin, *Restraining Forced Marriage*, 18 NEV. L. J. 919, 942 (2018).

families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.”¹¹⁰ HUD administrators have expressed concern with the tactics used by public housing authorities and private landlords who rely on “zero-tolerance crime policies” as a basis for evicting survivors.¹¹¹

These concerns have been the basis for federal regulations promulgated pursuant to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA”) to prevent the denial of housing for IPV survivors by public housing authorities (“PHAs”), including publicly subsidized housing.¹¹² Although these regulations are intended to provide some protection for survivors, there are significant gaps that hollow out these safeguards. Survivors must prove that they are victims of IPV, a burden notwithstanding that the regulations provide a number of means by which they can demonstrate their “victim status.”¹¹³ Moreover, the protections offered by VAWA’s housing provisions are of little use to victims who may have a record of previous evictions, or who have had to break their lease, circumstances that are not included in the statute’s protections against housing discrimination.¹¹⁴ Notwithstanding the findings by Congress that IPV victims are likely to have suffered significant economic abuse, including credit abuses resulting in bad

¹¹⁰ Sara K. Pratt, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)*, U.S. DEP’T OF HOUS. AND DEV. 1,1 (Feb. 9, 2011) <https://www.nhlp.org/wp-content/uploads/2017/09/Housing-Discrimination-Against-Victims-of-DV-2011.pdf>.

¹¹¹ *Id.* (noting that housing authorities and landlords may rely on such policies even when the violence is a result of the actions of a “guest, or other person under the victim’s ‘control’”).

¹¹² Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006). For the Department’s final rule on VAWA, see HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246 (Oct. 27, 2010) (amending 24 CFR pts.5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 966, 982, and 983).

¹¹³ 42 U.S.C. §1437d(u)(1)(C); 42 U.S.C. § 1437f(ee)(1)(c) (noting that there must be requisite documentation).

¹¹⁴ Rasheedah Phillips, *Addressing Barriers to Housing for Women Survivors of Domestic Violence and Sexual Assault*, 24 TEMP. POL. & CIV. RTS. L. REV. 323, 324-25, 328 n. 36, 329 (2015) (observing that victims of domestic violence may frequently break their lease in order to escape the abuser).

credit histories and an inability to control their finances, VAWA's housing regulations allow PHAs to deny survivors who have a negative credit report.¹¹⁵ According to the regulations, a tenant or applicant with "[a] record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants" may be denied housing.¹¹⁶ These are vague factors, and certainly may be related to the circumstances of IPV, thus resulting in the refusal or termination of housing. Survivors who may have been previously implicated in the criminal legal system—often due to trauma and coercion resulting from IPV—may be denied housing.¹¹⁷ In sum, the authority granted to PHAs and private landlords who receive federal subsidies to rent to low-income tenants to undertake "suitability" screening provides pretextual grounds for denying housing to IPV survivors.¹¹⁸

Domestic violence victims may have weak protections for tenancy in public housing, but they have less, if any protection from landlords in the private market. Studies show that survivors, the majority of who are poor, are among those least able to afford to market rate housing and among the most likely to be evicted.¹¹⁹ Landlords who fix rents per the whims of the market have unrestrained discretion to determine to whom to rent or how much to charge, particularly when choosing between tenants who demonstrate economic stability and those who do not.

Moreover, private landlords often resort to "nuisance" statutes and ordinances enacted by states and localities to evict a tenant who has been a victim of IPV, claiming that they have reason to fear

¹¹⁵ 24 C.F.R. § 960.203(c)(1) (2002) (allowing a PHA to deny housing to someone with a negative "past performance in meeting financial obligations, especially rent").

¹¹⁶ 24 C.F.R. § 960.203(c)(1) (2002).

¹¹⁷ 24 C.F.R. § 960.203(c)(3) (2002) (allowing public housing authorities to screen out and deny admission to certain applicants with unfavorable criminal histories receive points, citing 24 CFR 902.43(a)(5)).

¹¹⁸ 24 CFR §§ 982.552(e); 982.307(a); 982.54(d)(22), 982.307.

¹¹⁹ Rasheedah Phillips, *Addressing Barriers to Housing for Women Survivors of Domestic Violence and Sexual Assault*, 24 TEMP. POL. & CIV. RTS. L. REV. 323, 327 (2015); Susan A. Reif & Lisa J. Krisher, *Subsidized Housing and the Unique Needs of Domestic Violence Victim*, 34 CLEARINGHOUSE REV. 20, 21 (2000) (noting that for victims of domestic violence, obtaining affordable housing is often considered their greatest obstacle).

disruption and property damage to the premises.¹²⁰ Landlords argue that evictions are necessary where nuisance statutes require the abatement of criminal or other related disturbances in order to avoid statutory penalties including fines, property forfeiture, or criminal liability.¹²¹ These nuisance-related statutes not only serve to discourage a victim from seeking intervention from violence, but may result in evictions if they or a neighbor call law enforcement to the premises. Furthermore, the racial impact of these sorts of eviction tactics are evident from the data that demonstrates that nuisance claims disproportionately affect Black neighborhoods.¹²²

Advocates have turned to the Fair Housing Act (FHA) for protection from “nuisance-related” evictions from private landlords.¹²³ They have relied on the data that demonstrates that survivors of gender violence deemed to be a threat or nuisance are overwhelmingly women and thus, as the National Housing Law Project has noted, may be protected by the federal Fair Housing Act’s prohibition on sex discrimination.¹²⁴ The use of the FHA has produced some victories. However, as one scholar has noted, relying on the Act to “regulat[e] the idiosyncratic and largely unseen decision-making processes of millions of independent landlords, who have traditionally controlled access to the bulk of the nation’s rental housing stock” has been challenging.¹²⁵ Landlords now rely on commercial tenant screening products that can deeply probe a tenant’s background, “including criminal conviction histories, credit reports, and civil court records that reveal evictions, landlord-tenant disputes, and various forms of outstanding debt.”¹²⁶ Landlords are thus able to rely on various seemingly facially-neutral criteria to deny renting to a

¹²⁰ Siya U. Hegde, *I Am Not A Nuisance: Decriminalizing Domestic Violence Across New York’s Civil Housing & Criminal Justice Systems*, 29 GEO. J. ON POVERTY L. & POL’Y 1, 7, 34 (2021).

¹²¹ Noah M. Kazis, *Fair Housing for A Non-Sexist City*, 134 HARV. L. REV. 1683, 1703–05 (2021) (explaining the application of various nuisance ordinances to domestic violence and noting that “domestic violence is one of the offenses most frequently cited under nuisance ordinances”).

¹²² *Id.* at 1704.

¹²³ National Housing Law Project, *supra* note 108.

¹²⁴ *Id.* See generally, Kazis, *supra* note 121, at 1708.

¹²⁵ Anna Reosti, “*We Go Totally Subjective*”: *Discretion, Discrimination, and Tenant Screening in A Landlord’s Market*, 45 L. & SOC. INQUIRY 618, 619 (2020).

¹²⁶ *Id.* at 622.

survivor. As with nuisance claims generally, these tactics, disproportionately deny Black renters from the housing market.¹²⁷

The VAWA housing regulations and anti-discrimination laws designed to protect domestic violence victims from obstacles to obtaining and maintaining housing are thus undermined by a political economic order that privileges private markets and property laws. As Anna Reosti has written:

[L]egal efforts to regulate tenant screening will fail to meaningfully improve housing outcomes for renters with stigmatizing background records, in part due to the indeterminate and/or counterproductive effects of legal controls on discretion

Finally, the economic and policy environment in which contemporary landlords operate, characterized by an extremely tight rental market and the near-total devolution of affordable housing provision to the private sector, has amplified the power of private landlords relative to tenants.¹²⁸

B. Consequences of IPV: Housing Challenges for the Offender

Offenders may be at even greater risk of housing instability. As a result of the harms they have caused, and in order to protect the survivor from further harm, civil and, or criminal orders likely bar them from the residence they shared with the survivor. An offender's right to housing may be proscribed by terms of bail, probation, or a civil order.¹²⁹ Not only are they required to vacate the premises where they resided with the survivor, a court may impose additional conditions to prevent them from residing in proximity to family members and their communities.¹³⁰

¹²⁷ *Id.*

¹²⁸ *Id.* at 621, 627.

¹²⁹ See Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 2, 4 (forthcoming 2023), <https://ssrn.com/abstract=3897493>, (describing “the imposition of court-ordered conditions, including with regard to a person’s tenancy”).

¹³⁰ *State Domestic Violence and Housing Laws*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <http://www.ncdsv.org/images/StateDVhousinglaws.pdf>, (showing state statutes authorizing removing an offender from shared premises in domestic violence cases); see also *Zappaunbulso v. Zappaunbulso*, 842 A.2d 300

Housing penalties associated with IPV are long lasting. Offenders have little opportunity to move beyond their wrongdoer status and the attending punitive consequences. The enduring barriers to housing for persons implicated in the legal system have been well-established.¹³¹ Offenders are stigmatized for years thereafter and often denied housing, even in the circumstances when charges are dropped or their criminal record has been expunged, including upon a finding of wrongful conviction.¹³² It does not help matters that eviction orders, as part of IPV civil and criminal proceedings, often occur without any semblance of due process.¹³³

Similar to survivors—and more so with offenders—landlords rely on “overly broad, restrictive criminal history criteria” utilized to exclude those with criminal records.¹³⁴ While HUD Guidance suggests that some criminal histories may be irrelevant to determining tenant eligibility, they have no specific rules that prohibit denying tenancy to an offender.¹³⁵ The same commercial tenant screening companies that disadvantage survivors similarly investigate all matters relating to an offender’s background and may report criminal convictions, notwithstanding that they have been officially vacated.¹³⁶

As noted above, offenders are likely to experience economic difficulties and thus unlikely to be successful candidates in a private housing market characterized by an underinvestment in affordable

308 (2004) (prohibiting an offender from residing in the same neighborhood as the offender).

¹³¹ *Housing for All: Changing Policy, Advancing Justice*, CTR. FOR CT. INNOVATION (2022) <https://www.courtinnovation.org/about/announcements/housing-policy-advancing-justice>.

¹³² See Kallie Cox, *North Carolina Law Gives Those Arrested a Second Chance — But There’s a Catch*, *News & Observer*, (May 9, 202) https://www.newsobserver.com/news/state/north-carolina/article260550087.html#storylink=cpy_ (reporting on an investigation in North Carolina and the failure of the state’s Second Chance statute, finding that “landlords often still have access to criminal histories, undermining the effect of expungement”); Hegde, *supra* note 120, at 5.

¹³³ Hegde, *supra* note 120, at 29 (describing the observations of attorneys who attend civil and criminal proceedings involving claims of domestic violence).

¹³⁴ See Reosti, *supra* note 126, at 624.

¹³⁵ *Id.* at 625.

¹³⁶ *Id.* at 622.

housing.¹³⁷ Racial and ethnic minorities are frequently denied adequate housing due to racism and discrimination.¹³⁸ Yet housing advocates note the lack of progress in challenging housing discrimination through the use of fair housing laws.¹³⁹

The housing consequences that follow offenders implicated in IPV legal proceedings enforce a state of homelessness, profound anxiety, and instability.¹⁴⁰ Offenders denied affordable and decent housing are ostracized and excluded from community membership.¹⁴¹ Their prospects for employment, education, and health-related benefits are diminished.¹⁴² And more, the absence of stable housing results in trauma, stress, poor health, and institutionalization.¹⁴³ That housing is fundamental to subsistence and well-being identifies it as a core human right, yet it continues to function as a commodity. These conditions undermine desistance efforts and counter efforts to address and mitigate IPV.

¹³⁷ See Summers *supra* note 129; Zappaunbulso, *supra* note 130. See generally Maria Ponomarenko, *Our Fragmented Approach To Public Safety*, Am. Crim. L. Rev. (Dec. 14, 2021), <https://ssrn.com/abstract=3985581>.

¹³⁸ Samuel R. Aymer, *A Case for Including the “Lived Experience” of African American Men in Batterers’ Treatment*, 15 J. OF AFR. AM. STUD. 359, 360 (2011).

¹³⁹ Reosti, *supra* note 1265, at 619.

¹⁴⁰ See Hegde, *supra* note 120, at 28.

¹⁴¹ Reeves, *supra* note 104, at 6 (describing the range of needs that housing addresses, including investment); *Housing Justice*, CTR. FOR CT. INNOVATION, https://www.courtinnovation.org/sites/default/files/media/document/2022/CCI_FactSheet_HousingJustice_11102021.pdf.

¹⁴² Adam Looney, *Five Facts About Prisoners and Work Before and After Incarceration*, Mar. 14, 2018, at <https://www.brookings.edu/blog/up-front/2018/03/14/5-facts-about-prisoners-and-work-before-and-after-incarceration/>.

Amanda Johnson, *Challenging Criminal Records in Hiring Under the Americans with Disabilities Act*, 48 COLUM. HUM. RTS. L. REV. 211, 217–18 (2017).

¹⁴³ Ignacio Jauregilorda et al., *Eviction Prevention and Mental Health: A New Paradigm for Civil Justice Reform*, CTR. FOR CT. INNOVATION 1, 4 (2021) https://www.courtinnovation.org/sites/default/files/media/document/2021/Guide_CCI_EvictionPrevention_MentalHealth_11222021.pdf, (noting that these consequences more likely to affect individuals with behavioral health issues); see Kathryn A. Sabeth, *(Under)enforcement of Poor Tenants’ Rights*, 27 GEO. J. ON POVERTY L. & POL’Y 97, 105-107 (2019).

IV. COMPARISON AND CONTRASTS: GENDER VIOLENCE, POLITICAL ECONOMY AND LESSONS FROM MEXICO AND CUBA

As set forth in this Article, gender violence requires an analysis that considers theories related to political economy and the socioeconomic injustices that follow from neoliberalism. A review of the tragic developments regarding gender violence in Mexico following the country's economic transformation to meet demands of U.S. global financial institutions compared with the Cuban model to address IPV as a function of socio-economic deficiencies serves to differentiate political economic systems and their relationship to gender violence.

A. *Ciudad Juárez: A Neoliberal Prototype*

Following the 1992 negotiation of the North American Free Trade Agreement (“NAFTA”) and the expansion of the “free trade zone” along the U.S.–Mexico border¹⁴⁴ the murder rate of women in Ciudad Juárez (“Cd. Juárez”) began to soar.¹⁴⁵ During these years, U.S. capital investment transformed northern Mexico into what was known as the *maquiladora* (*maquila*) sector, a free trade zone for U.S. companies.¹⁴⁶ The transformation was at the behest of the International Monetary Fund, the World Bank, and the Washington Consensus free-market development policies that were first applied in Latin America.¹⁴⁷ Indeed, during the era of Cd. Juárez's economic metamorphosis, the city was described as “the laboratory of our

¹⁴⁴ Canada-Mexico-United States: North American Free Trade Agreement, Dec. 17, 1992, 107 Stat. 2057, 32 I.L.M. 289,

¹⁴⁵ Julian Resendiz, *Juarez reports nearly 500 women murdered in past 3 years*, BORDERREPORT (Aug 31, 2021, 3:15 PM), <https://www.borderreport.com/hot-topics/border-crime/juarez-reports-nearly-500-women-murdered-in-past-3-years/>, (noting that Amnesty International and other groups found that there were approximately 400 killings of women in Juárez between 1993 and 2005; more recently the numbers have greatly increased).

¹⁴⁶ See generally Marc Ellenbogen, *Can the Tariff Act Combat Endemic Child Labor Abuses? The Case of Côte d'Ivoire*, 82 TEX. L. REV. 1315, 1344 n.200 (2004) (noting that Maquilas or maquiladoras, refer generally to foreign-owned assembly plants located in Mexico that produce for export); Kim Moody, *NAFTA and the Corporate Redesign of North America*, 22 LATIN AM. PERSP. No. 1, 98 (1995).

¹⁴⁷ See Deborah M. Weissman, *The Political Economy of Violence: Toward an Understanding of the Gender-Based Murders of Ciudad Juárez*, 30 N. C. J. INT'L L. AND COMM. REG. 795, 811 n. 96 (2005).

future” that developed with strict adherence to development policies prescribed by powerful international economic and political institutions.¹⁴⁸ Others, however, have referred to it as the period of Mexico’s “descent into capitalism gore—the embodiment of hegemonic and economic processes.”¹⁴⁹

Prior to the economic changes wrought by NAFTA, the murder rate in Cd. Juárez was considerably lower than that of similar-sized U.S. cities.¹⁵⁰ Following the development of the free trade zone, the number of murdered women increased and Cd. Juárez reported the highest levels of reported domestic violence in Mexico—a six-fold increase.¹⁵¹ The victims were principally *maquila* workers killed or disappeared to or from work at multinational corporations, including General Electric, Alcoa, Dupont, RCA, General Motors, Ford, and Chrysler.¹⁵² A number of theories have been offered as an explanation for the increase in violence against women.¹⁵³ Many feminist organizations emphasized the need to protect women by invoking human rights law and the need to reform Mexico’s criminal justice system.¹⁵⁴

But perhaps most importantly, it was the impact of economic liberalization policies on Cd. Juárez that had the greatest impact on rising rates of gender violence. Labor practices, particularly as they affected women workers, along with the destruction of infrastructure and lack of housing as workers were drawn to the border city had significant bearing on violence against women in all its

¹⁴⁸ CHARLES BOWDEN, JUÁREZ: THE LABORATORY OF OUR FUTURE (1998).

¹⁴⁹ Elva Fabiola Orozco, *Mapping the Trail of Violence: The Memorialization of Public*

Space as a Counter-Geography of Violence in Ciudad Juárez, 18 J. OF LATIN AM. GEO. 132, 133 (2019) (citing Sayak Valencia).

¹⁵⁰ Debbie Nathan, *Work, Sex and Danger in Ciudad Juárez*, NACLA: REP. ON THE AMS., (Sept. 25, 2017), <https://nacla.org/article/work-sex-and-danger-ciudad-juarez>.

¹⁵¹ *Id.* at 30.

¹⁵² Diego Cevallos, *México: Toll of Murdered Young Women Tops 300*, CORPWATCH (Feb. 20, 2003), <https://www.corpwatch.org/article/mexico-toll-murdered-young-women-tops-300>; Alma Guillermprieto, *A Hundred Women; Why Has a Decade-Long String of Murders Gone Unsolved?*, NEW YORKER (Sept. 29, 2003), <https://www.newyorker.com/magazine/2003/09/29/a-hundred-women>.

¹⁵³ See Weissman, *supra* note 147, at 805-809.

¹⁵⁴ *Id.* at 804.

forms.¹⁵⁵ The need for low-wage workers at the growing number of foreign factories resulted in the targeted recruitment of women from southern Mexico whose agrarian economy had been disrupted by the terms of NAFTA.¹⁵⁶ Working conditions were harsh and dangerous. Women were relegated to the least desirable jobs and subjected to sexual harassment, while men similarly suffered gender-based harassment and shamed for their lowly status as assembly line workers unable to earn respectable wages.¹⁵⁷ Cd. Juárez, moreover, lacked the capacity to provide housing for the thousands of workers who arrived in search of maquila jobs, and who were forced to live in squatter settlements.¹⁵⁸

These conditions contributed to the unraveling of the social fabric and increased cases of stress-related mental illnesses. Indeed, prior to the arrival of the export zone, Cd. Juárez was considered a reasonably safe place.¹⁵⁹ But the city's economic transformations gave rise to what has been characterized "as a social disaster and one of the most distressed urban areas in the Western

¹⁵⁵ See NORMA IGLESIAS PRIETO, *BEAUTIFUL FLOWERS OF THE MAQUILADORA: LIFE HISTORIES OF WOMEN WORKERS IN TIJUANA*, 10-11, 21-22 (1994) (noting the industry's description of the preferred workforce as docile, disciplined, healthy, and productive young women); Melissa W. Wright, *Feminine Villains, Masculine Heroes, and the Reproduction of Ciudad Juárez*, 19 *SOC. TEXT* 93, 97 (2001); David W. Eaton, *Transformation of the Maquiladora Industry: The Driving Force Behind the Creation of a NAFTA Regional Economy*, 14 *ARIZ. J. INT'L & COMP. L.* 747, 774 (1997) (noting that maquila workers have no option other than sub-standard housing).

¹⁵⁶ Jennifer Mandina, *NAFTA's Contribution to the Discrimination of Mexican Women in the Maquiladoras*, 9 *BUFF. WOMEN'S L. J.* 25, 27 (2001-2002); Leslie Salzinger, *Making Fantasies Real: Producing Women and Men on the Maquila Shop Floor*, *NACLA: REP. ON THE AMS.*, Mar-Apr. 2001, at 13, 14 (noting one manufacturer who stated that 85% of the workforce is made up of women); see also Weissman, *supra* note 147, at 810.

¹⁵⁷ Nathan, *supra* note 150, at 27 (noting that men were sent to female-only lines as a form of discipline).

¹⁵⁸ See Eaton, *supra* note 155.

¹⁵⁹ Sam Dillon, *What Went Wrong?: México Can't Fathom Its Rising Crime*, *N.Y. TIMES* (June 28, 1998), <https://www.nytimes.com/1998/06/28/weekinreview/the-world-what-went-wrong-mexico-can-t-fathom-its-rising-crime.html>; see Debbie Nathan, *Missing the Story*, *TEX. OBSERVER* (Aug. 30, 2002, 12:00 AM), <https://www.texasobserver.org/1011-movie-review-missing-the-story/>, (noting that the rate of female homicides was far lower than in U.S. cities of similar size),

Hemisphere.”¹⁶⁰ The structural adjustment policies imposed by U.S.–dominated global financial institutions required privatization of state sector systems, including transportation, health care, pensions, and even police agencies.¹⁶¹ The political economic remake of Cd. Juárez created a category of victims: poor women workers who were displaced from social protections in the workplace as well as in their communities and homes. It further created a new category of offenders: individuals who suffered the socio–psychological consequences of structural violence that serves to authorize lawlessness as the moral order shifts and societal norms lose legitimacy.¹⁶²

Economic liberalization transformed household relations. Cd. Juárez, along with the rest of Mexico, experienced the demise of the domestic economy.¹⁶³ The city expanded to accommodate maquilas that functioned as a result of the consolidation of cheap labor but provided no new sources to families.¹⁶⁴ Poverty deepened. Entire families experienced instability and uncertainty as shifting economic arrangements transformed life as lived. The chaos and instability of a reordered–economic regime that transformed the border was replicated in households where families saw increased rates of divorce, household volatility, and IPV.¹⁶⁵

Mexico’s economic transformations also affected legal responses to the rise in gender violence. Mexico’s legal system has undergone significant transformation at the behest of World Bank

¹⁶⁰ Weissman, *supra* note 147, at 824.

¹⁶¹ ENRIQUE DUSSEL PETERS, POLARIZING MÉXICO 68 (2000); see Mercedes González de la Rocha, *The Urban Family and Poverty in Latin America*, 22 LATIN AM. PERSP. 12, 26 (1995) (describing the impact of the free trade zones on the economies of Mexican urban areas).

¹⁶² See PETER UVIN, AIDING VIOLENCE: THE DEVELOPMENT ENTERPRISE IN RWANDA 138 (1998) (describing the social processes by which people may become “increasingly unhampered by constraints on the use of violence”).

¹⁶³ J. Patrick LaRue, *The ‘Ill-icit’ Effects of NAFTA: Increased Drug Trafficking into the United States Through the Southwest Border*, 9 CURRENTS: INT’L TRADE L. J. 38, 39 (2000) (noting the negative effects on Mexico’s domestic economy, particularly on the U.S.–Mexico border, as a result of “the importation of U.S. and foreign products.”).

¹⁶⁴ Paul Cooney, *The Mexican Crisis and the Maquila Boom*, 28 LATIN AM. PERSP. 55, 73 (2001).

¹⁶⁵ See LOURDES BENERÍA, GENDER, DEVELOPMENT, AND GLOBALIZATION 27 (2003) (connecting the links between domestic violence, male unemployment, and household poverty).

directives to assure the responsiveness of the judicial system to economic liberalization strategies.¹⁶⁶ In order to attract foreign investors, Mexico was obliged to alter its national legal processes.¹⁶⁷ Once strong consumer and labor protection laws have been weakened.¹⁶⁸ Mexican labor law specialists have reported that U.S. labor practices discouraged union organizing drives, harming workers and their abilities to support families.¹⁶⁹

Advocates criticized police and other criminal justice actors for their increasing failure to act and thus engendering a climate of impunity.¹⁷⁰ Human rights groups denounced officials at the highest levels of the federal government as well as local authorities for the failure to take seriously and timely respond to the soaring rates of gender violence.¹⁷¹ Police practices predated economic

¹⁶⁶ See Maria Dakolias, *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*, WORLD BANK TECHNICAL PAPER, 1996, at 1, xi; Alexis James Gilman, *Making Amends With the Mexican Constitution: Reassessing The 1995 Judicial Reforms and Considering Prospects for Further Reform*, 35 GEO. WASH. INT'L L. REV. 947, 957 (2003); Stephen Zamora, *NAFTA and the Harmonization of Domestic Legal Systems: The Side Effects Of Free Trade*, 12 ARIZ. J. INT'L & COMP. L. 401, 419-20 (1995).

¹⁶⁷ See Patrick Del Duca, *The Rule of Law: México's Approach to Expropriation Disputes in the Face of Investment Globalization*, 51 UCLA L. REV. 35, 114 (2003) (noting a 1992 law allowing international legal processes to resolve controversies between Mexicans and foreign governments or individuals).

¹⁶⁸ Larry B. Pascal, *Reforms Modernize México's Financial Services Sector*, 67 TEX. BUS. J. 46, 47-48 (2004) (noting that in 2000, as a result of pressure from foreign investors, Mexico changed its laws to facilitate foreclosure and hasten collection procedures).

¹⁶⁹ See Louise D. Williams, *Trade, Labor, Law and Development: Opportunities and Challenges for Mexican Labor Arising from the North American Free Trade Agreement*, 22 BROOK. J. INT'L L. 361, 390 n. 131 (1996) (describing practices such as the use of worker replacement during strikes, alternative dispute resolution methods, and threats of plant closure).

¹⁷⁰ See e.g., *Mexico: Intolerable Killings: 10 Years of Abductions and Murder of Women in Ciudad Juárez* and *Chihuahua*, AMNESTY INT'L USA, Aug. 2003, at 37, <https://www.amnesty.org/en/documents/amr41/026/2003/en/>; Nick Pacheco, *Resolution Urging the Investigation of the Murders in Ciudad Juarez*, 28 AZTLÁN: J. CHICANO STUD., Fall 2003, at 203, (adopted by the Los Angeles City Council); Chris Kraul, *Juarez Killings Breed Fierce Anger*, L.A. TIMES (Mar. 8, 2003, 12:00 AM) <https://www.latimes.com/archives/la-xpm-2003-mar-08-fg-juarez8-story.html>, (reporting on organizing efforts and marches to call attention to police failures.)

¹⁷¹ See *supra* note 170 and accompanying text.

liberalization transformations and NAFTA have long been a point of concern. However, the failure of law enforcement post-NAFTA, to protect safeguards has been attributed to the conditions imposed by international financial institutions, which weaken the ability of the state to discharge its functions.¹⁷² “Policies and conditions attached to the IMF and World Bank funds, as well as agreements with the United States requiring cuts in public spending and the privatization of public functions,” have undermined the ability of the government to provide legal protections to citizens.¹⁷³ As the authority of the state weakened, corruption increased along with repressive police tactics and state impunity increased.¹⁷⁴ Traditionally weak legal protections were further weakened by political economic interests.

The sharp increase in gender violence in Cd. Juárez is not dissimilar to the circumstances in other countries ensnared in economic liberalization projects. For example, Guatemala City was another site where the explosion of *maquiladoras* coincided with an epidemic of gender murders.¹⁷⁵ The violence against women in Cd. Juárez and in Guatemala has been represented as a deviancy of the place if not the people. But the idea of deviancy to describe the increase in gender violence may be more apt of a description of the political economic relationships that took hold in export zones.

B. Cuba’s Model: Socialism and Gender Violence (1959–2012)

Cuba’s approach to social problems between 1959 and 2012 provides another opportunity to examine how political economic systems affect prevention and intervention strategies with regard to gender violence.¹⁷⁶ Cuba’s political economic model following the

¹⁷² Weissman, *supra* note 147, at 843.

¹⁷³ *Id.* at 844.

¹⁷⁴ Anthony W. Pereira & Diane E. Davis, *New Patterns on Militarized Violence and Coercion in the Americas*, 27 *LATIN AM. PERSP.*, Mar. 2000, at 2, 3, 6 (noting that the violence is a product of “specific institutional dynamics, relationships, and interactions”).

¹⁷⁵ See Edgardo Rotman, *The Globalization of Criminal Violence*, 10 *CORNELL J. L. & PUB. POL’Y* 1, 26, 28 (2000) (describing labor exploitation in Guatemala City that has generated gender violence).

¹⁷⁶ The author ends this period of comparison shortly after 2012, the year that the Cuban government introduced economic reforms and shifted to a mixed economy.

1959 revolution was shaped by the tenets of a socialist project.¹⁷⁷ State planning and ownership replaced a market economy in an effort to ameliorate poverty and deep inequalities of wealth.¹⁷⁸ Socialism functioned as “a sense of social justice” and hope.¹⁷⁹ The economic shift “renewed public life . . . condemned sexual and racial discrimination,” and more.¹⁸⁰ Employment opportunities and working conditions improved along with improved access to health care, and literacy campaigns.¹⁸¹

The ideals of the revolution have shaped the ways Cubans endeavor to address “ordinary crime.”¹⁸² Cuban policymakers favored a structural approach based on the view that transgressive behaviors are the result of particular social conditions.¹⁸³ Many Cubans sought to improve the human condition (“*lucha por la formación de un hombre mejor*”) through the distribution of services by way of egalitarian initiatives—an approach that would ameliorate criminal behaviors.¹⁸⁴ Cuba amended its Penal Code and “depenalized” certain

See generally Ricardo Torres Pérez, *Economic Changes in Cuba: Current Situation and Perspectives*, HARV. INT’L REV. 16 Summer 2012. The Cuban economy had been significantly undermined by a tightening of the U.S. embargo and punitive sanctions, the effects of the pandemic, and the related loss of Cuba’s revenue from tourism. *See U.S.-Cuba Relations*, COUNCIL ON FOREIGN REL. (June 3, 2022, 12:45 PM), <https://www.cfr.org/background/usa-cuba-relations>. As a result of these economic changes, it is difficult to assess whether the socialist economic foundations of prevention and intervention described herein have been fully sustained.

¹⁷⁷ *See* Deborah M. Weissman & Marsha Weissman, *The Moral Politics of Social Control: Political Culture And Ordinary Crime In Cuba*, 35 BROOK. J. INT’L LAW 311, 311 (2010) (Reviewing the pre-revolutionary ideals that influenced the revolution and helped to shape its goals).

¹⁷⁸ *See* ARCHIBALD R. M. RITTER, *ECONOMY: REVOLUTIONARY PERIOD IN CUBA: PEOPLE, CULTURE, HISTORY* 222, 224-25 (Alan West-Durán, ed. 2012) (reviewing the economic changes and challenges resulting from the U.S.-imposed embargo and failed institutional restructuring),

¹⁷⁹ *See* JULIO CESAR GUANACHE ZALDIVAR, *CUBAN THOUGHT AND CULTURAL IDENTIFY: SOCIALIST THOUGHT, CUBA: PEOPLE, CULTURE, HISTORY* 123, 127 (Alan West-Durán ed. 2012).

¹⁸⁰ *See generally id.*

¹⁸¹ *Id.*

¹⁸² Weissman & Weissman, *supra* note 177, at 314 (describing Cuban interpretations of “ordinary crime” as opposed to “political crime.”).

¹⁸³ *Id.* at 322.

¹⁸⁴ Ofelia de los Milagros García Cueto, *La Violencia, Un Mai Sin Fronteras* [Violence, A Harm Without Borders], 6 REVISTA DE CIENCIAS MÉDICAS LA

crimes—particularly those related to juveniles and families and re-designated them as antisocial actions committed as a consequence of economic need or lack of education.¹⁸⁵ Mass organizations were established to improve day-to-day conditions for the Cuban people.¹⁸⁶ One of these entities, the Federation of Cuban Women (“FMC”) was established to create programs to assist women and families with quotidian concerns, including health issues, family violence, gender discrimination, educational programs, and employment issues.¹⁸⁷

Cubans have focused on promoting norms of gender equality and social solidarity as the principal means to deter violence against women. Cuban social scientists have supported a two-prong approach: (1) education to change gender norms that contribute to domestic violence;¹⁸⁸ and (2) material support for families to achieve stable, violence-free families.¹⁸⁹ In an effort to improve the status

HABANA 53 (2000), <http://www.medimay.sld.cu/index.php/rcmh/article/view/37/72>.

¹⁸⁵ See Raúl Gómez Treto, *Thirty Years of Cuban Revolutionary Penal Law*, 18 LATIN AM. PERSP., 114, 118 (1991).

¹⁸⁶ See Rhoda Pearl Rabkin, *Cuban Political Structure: Vanguard Party and the Masses*, in CUBA: TWENTY-FIVE YEARS OF REVOLUTION 251, 262-63, 265 (Sandor Halebsky & John M. Kirk eds., 1985) (explaining how organizations, like the Confederation of Cuban Workers (CTC), the National Organization of Small Agriculturists (ANAP), and the Committees in Defense of the Revolution (CDRs) functioned against counter-revolutionary as well as crime in neighborhoods and workplaces); see generally RICHARD R. FAGEN, THE TRANSFORMATION OF POLITICAL CULTURE IN CUBA (1969) (providing an overview of these organizations).

¹⁸⁷ See *Cuban Political Structure: Vanguard Party and the Masses*, supra note 186, at 251, 262-63, 265; see also U.N. Comm. on Human Rights, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy Addendum Report on the Mission to Cuba, 56, ¶¶ 12, 42, 74, U.N. Doc. E/CN.4/2000/68/Add.2 (Feb. 8, 2000).

¹⁸⁸ Ellen Hardy & Ana Luisa Jiménez, *Masculinidad y Género* [Masculinity and Gender], 27 REVISTA CUBANA DE SALUD PÚBLICA 77, 79 (2001).

¹⁸⁹ Caridad Navarrete Calderón, *El Impacto de la Investigación-acción Participativa en la Actividad Preventiva Social y Criminológica* [The Impact of Participative Investigation-Action in Social and Criminological Preventive Activity], 12 ANUARIO DEL CENTRO DE INVESTIGACIONES JURIDICAS (2006) (Cuba), (on file with the author) (noting that prevention projects have as a goal the improvement of material conditions for families); Caridad Navarrete Calderón, *Caracterización Criminológica Victimológica de Mujeres Comisoras de Lesiones de Ciudad de la Habana* [Criminological Victimological Characterization of Women Assaulters

of women, the state implemented reforms affecting culture and education. For example, state-run television altered programming narratives in an effort to change depictions of socially constructed gender roles in the home.¹⁹⁰ Schools edited texts and educational curricula to depict women as fully capable persons integrated into all levels of society.¹⁹¹ Childcare centers created new children's play activities to dismantle traditional roles assigned by sex.¹⁹²

Law reforms have been implemented for the purpose of achieving gender equality. Albeit a symbolic measure, the 1975 Cuban Family Code required an equal division of housework and childcare between husbands and wives.¹⁹³ The 1976 Constitution established ideals addressing women's issues, including guiding standards for marriage as an equal partnership, and proclaimed equal political, economic, and social rights as between men and women generally.¹⁹⁴ Cuba was the first country to sign and the second country to ratify the Convention to End Discrimination Against Women.¹⁹⁵ Cuba's advancements for women in education, employment, and health has been described as "enviable."¹⁹⁶

in Havana], ILANUD: REVISTA DEL INSTITUTO LATINOAMERICANO DE LAS NACIONES UNIDAS PARA LA PREVENCIÓN DEL DELITO Y EL TRATAMIENTO DEL DELICUENTE, 235, 239-40 (2006) (on file with the author).

¹⁹⁰ Gail Reed, *The Media on Women: Caught Napping*, CUBA UPDATE, Summer 1991, at 8, 15, 17 (contrasting recent television productions that have featured strong women as central characters with a popular cartoon, "The Little Pumpkin," which has typically reinforced traditional gender stereotypes but has recently made one of the primary caretaker figures male).

¹⁹¹ U.N. Comm. on the Elimination of Discrimination Against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of all Forms of Discrimination Against Women: Fourth Periodic Report of Cuba*, ¶¶ 116-17, U.N. Doc. CEDAW/C/CUB/4 (Sept. 27, 1999).

¹⁹² *Id.* ¶ 118.

¹⁹³ See LEY NO. 1289 CODIGO DE LA FAMILIA, art. 24 (Cuba); see also Marjorie King, *Cuba's Attack on Women's Second Shift 1974-1976*, 4 LATIN AM. PERSP., Winter-Spring 1977, at 106, 108 (citing articles 24-28 of the Cuban Family Code).

¹⁹⁴ King, *supra* note 193, at 109-110 (noting labor laws were also enacted to protect women); see also Comm. on the Elimination of Discrimination Against Women, *supra* note 191, at ¶ 75.

¹⁹⁵ See U.N. Comm. on the Elimination of Discrimination Against Women, *supra* note 191, at ¶ 1.

¹⁹⁶ Berta E. Hernández-Truyol, *Cuba and Good Governance*, 14 TRANSNAT'L L. & CONTEMP. PROBS. 655, 672-673 (2004) (describing Cuba's gender equality and empowerment in academics).

Domestic violence has been addressed within these social and institutional practices and ideological foundations. Ideals of a cohesive Cuban society and the moral imperative of *solidaridismo* encouraged multiple forms of intervention in the household, the neighborhood, and the workplace.¹⁹⁷ Friends and family often intervene directly with abusers; according to one expert's estimate, they do so in at least 90% of cases involving family violence.¹⁹⁸ The FMC has encouraged its members to provide both victims and perpetrators with a range of services.¹⁹⁹ It organized self-help groups "designed as alternatives to the formal legal system, specifically for male perpetrators."²⁰⁰ Neighbors may bring perpetrators to FMC programs, and rely on family doctors and social workers to investigate and offer services.²⁰¹ Cuban researchers as well as FMC organizers have urged the need to address the political and economic determinants of domestic violence. Experts underscore the importance of research and policy initiatives to address the sources of domestic violence. Scholars with the Center for Legal Research of the Ministry of Justice have argued that the sources of domestic violence range from meta-systems, including the U.S. embargo and its attendant deprivations and stress, to micro-systems and personal traits often related to socially constructed norms relating to male dominance and female submission.²⁰²

Cubans rely on legal strategies, including provisions within the formal criminal justice system, but these too are designed to maximize services and integrate the perpetrator into the community. Prosecutors often encourage the perpetrator to enter into an informal contract, the terms of which include an agreement to obtain treatment to change his behavior.²⁰³ But mandates issued by the National Assembly have focused establishing commissions to further research, study, and monitor matters related to domestic violence.²⁰⁴ Despite ongoing debate and international pressure, "Cuba has no

¹⁹⁷ Weissman & Weissman, *supra* note 177, at 342.

¹⁹⁸ *Id.* at 343.

¹⁹⁹ Special Rapporteur's Report, *supra* note at 187 ¶¶ 12, 42.

²⁰⁰ Weissman & Weissman, *supra* note 177, at 342.

²⁰¹ *Id.* at 343.

²⁰² Calderón, *supra* note 189, at 239-41.

²⁰³ Weissman & Weissman, *supra* note 177, at 343.

²⁰⁴ U.N. Comm. on the Elimination of Discrimination Against Women, *supra* note 191, at ¶ 41.

specific crime of ‘domestic violence.’²⁰⁵ In response to calls to include a particular provision related to IPV, the National Assembly added violence between intimates as an aggravating factor to relevant code sections.²⁰⁶ Some perpetrators are imprisoned, particularly those convicted of rape.²⁰⁷

The Cuban socialist system treats domestic violence as a problem reflecting cumulative social circumstances.²⁰⁸ This approach is consistent with Cuban political culture; it also appears to be successful. Data, including a Bureau of Justice report, suggests that rates of domestic violence are lower in Cuba than in the United States or other parts of Latin America.²⁰⁹

CONCLUSION

IPV must be understood as social problem that arises from structural issues related to the political economy. Solutions to this problem must be sought within the realm of political economy—that is, within the structures that support the well-being of families and communities. Without attention to socio-economic disadvantages, anti-violence advocates are circumscribed in their efforts to mitigate IPV. Moreover, they limit their opportunities to contribute to the broader goals of social justice.

The comparison and contrasts between the circumstances in Cd. Juárez and Cuba demonstrate the ways that political economic circumstances affect gender violence. The rise in gender violence occurred during the period of Mexico’s intense economic liberalization. The border was transformed into a site where labor in general, but women’s labor in particular, was exploited. State authorities and legal systems, modified according to the dictates of U.S.–dominated

²⁰⁵ Weissman & Weissman, *supra* note 177, at 344.

²⁰⁶ See U.N. Comm. on Human Rights, *supra* note 187, at ¶ 87 (commenting on Law No. 87, adopted in February 1999, amending the Cuban Criminal Code).

²⁰⁷ *Id.* ¶ 37.

²⁰⁸ See generally Dixie Edith, *Cuba: Agresión Sin Golpes* [*Cuba: Aggression without Blows*], SEMLAC (Feb. 29, 2008), <https://www.redsemlac-cuba.net/redsemlac/violencia/ck83-noticias/agresion-sin-golpes/> (rejecting the notion of thinking of a perpetrator as “*quién es malo y quién bueno*” (who is good and who is bad) because of the likelihood that the perpetrator was himself abused at an earlier point).

²⁰⁹ Weissman & Weissman, *supra* note 177, at 346 n. 205.

global financial institutions were unable and unwilling to protect the rights of residents of the city or provide for the minimum requirements for basic living conditions. These circumstances led to the unraveling of the social fabric with deleterious impacts on families and households.

Cuba's post 1959 efforts addressed gender violence as a phenomenon that cannot be separated from questions of a political economy and focused on community and family well-being. As a means of addressing structural issues, Cubans first sought to shift family and household burdens from women to the state, and to achieve norm transformations through cultural and educational programming. These changes which strengthened social relationships were accompanied by legal and constitutional reforms largely of a non-punitive nature to improve the circumstances of those who were harmed and those who harmed. By all accounts, the Cuban approach has been more successful than elsewhere.

The U.S. political system is characterized by a diminished role for the state when it comes to protecting the socio-economic welfare of communities and families. Neoliberalism protects markets and profits that are often the sources of hardships of families. The issue of gender violence cannot be treated as one that stands outside of the problems wrought by the current U.S.-economic system. As Corrine Blalock has written, "late capitalism has been defined by perpetual crisis," a crisis that contributes to IPV.²¹⁰ Without efforts to identify and address the political economic underpinnings of gender violence, social condemnation of this social problem will remain no more than that.

²¹⁰ See Corrine Blalock, *Introduction: Law and the Critique of Capitalism*, 121 S. ATL. Q. 222, 225 (2022).