

# The Legal Endurance and Impunitive Nature of Intimate Partner Violence: A Comparative Analysis of the United States and Morocco

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THE LEGAL ENDURANCE AND IMPUNITIVE NATURE OF INTIMATE  
PARTNER VIOLENCE: A COMPARATIVE ANALYSIS OF  
THE UNITED STATES AND MOROCCO

by

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## ABSTRACT

The fact that the most dangerous place to be as a woman is their home is an unnerving reality experienced on a cross-national scale, no matter the socio-political structure of their nation-states. This thesis fundamentally sources and deconstructs a common denominator between the United States, relayed as a secularized, democratic nation-state, and Morocco, understood as a monarchical, *Shari'a* informed nation-state, to be a patriarchal framework. In identifying the patriarchal framework as that which writes, interprets, and acts on laws and cultural beliefs, there is a recognition of how legal literature and praxis gives widespread impunity to men in their violence against women, especially in the home. Where they seek to keep punishment in the private sphere, this paper, in coordination with both North American and Moroccan feminists, seeks to drive punishment into the public sphere. In doing so, men and women will be understood as wholly equal at every level of the nation-state.



## ACKNOWLEDGEMENTS

In considering this thesis, the question was never whether or not I wanted to write one. I love to research the theories, laws, politics and people whom have created that which is our international system today, and advocate my own deliberations – why else would I have become an International Studies major? The question leaned rather to configuring how I may best syndicate what experiences have most fashioned and guided my undergraduate career.

In the summer of 2017, I studied Arabic in Morocco while living with a host family who treated me with the utmost respect and kindness – a family I am blessed to have spent many nights with at the dinner table exchanging jokes, sentiments, and welcomed curiosities about our cultures. I am immeasurably grateful for this study abroad experience, for all of its adventures and luster as a world different from what I know, but also for the trials that allowed for critical reflection. To my host siblings, Bensalem and Salma, thank you for opening up your lives and embracing me into your family. Thank you for showing me your favorite spots in Meknès, including me in *eid al-fitr* celebrations, laughing over pop culture, busting out spontaneous photoshoots on the roof-top, allowing me to play soccer with you and your friends in the streets, and helping me with my Arabic homework. I miss you both, dearly. Morocco forever has a special

corner of my heart because of you two and your loving parents. We are proof that friendship knows no barriers to language, religion and geography.

A second experience critically contributive to what has become my thesis is my internship in the summer of 2019 in the Family Advocacy Clinic at Suffolk University Law School. Suffice it to say, I learned a lot and endured the tests of exposure to a side of humanity I did not truly and personally know prior. To be frank, interpersonal violence plagues our society. My witness to the simultaneous structural and personal efforts to combat this reality demonstrated a crucial legal avenue I had not yet considered. But, the experience also proved that even the most updated and critical law can only go so far. Society, from the judiciaries to the common people, has to *want* to abide by these laws – and such is the concentric world we live in. With this rather brutal reality-check, it is hard to simply accept the social order. Judiciaries shifting their judgments quite obviously on the basis of sex and ethnicity, compounded with disregard for the psychological and physiological traumas of suffering is persistent. Such engrained behavior is unreservedly immoral and must be systematically ameliorated. To this concern, I hope to demonstrate a prescriptive notion in the United States case study on how we may take steps towards fixing a deeply flawed system. To the strong women I encountered who were brave enough to seek legal recourse, I am relieved that you found refuge in the lawyers I worked under. They never give up in the fight for justice, even when knowing full well the challenges to get there. To the aforementioned lawyers I worked under and had the fortune of getting to know, Maritza Karmely and Chris Butler, I am in awe of your work

and the raw commitment you have made to the world to mold it into a safer and more equitable place. I, on behalf of many, thank you.

With these two formative experiences, I needed to review and tussle the enduring questions that have constructed and enthused seminal discussion always as an International Studies major and Islamic Civilizations and Societies minor. Questions like: How do language, religion and identity interact and form a culture and political system? How do we define a “progressive” culture or political system, and how can we justify our authority to determine such delineations? When we focus on our differences, do our similarities – that may very well, and often do transcend borders – crumble beneath common conversation? Or, do we ruse ourselves in the critique of another that we conveniently fail to recognize our own contributions to injustice and inequity, or the presence of those evils at home? These questions have been birthed, nurtured and challenged unremittingly throughout my Boston College career. Broad in its delivery and inviting infinitely more, it is in asking these more nuanced questions that I was able to arrive at what I seek to accomplish here. Thank you to Boston College for instilling such curiosity in me, and particularly Prof. Erik Owens for teaching the practice of compassion for others, and to always consider what is at stake.

I would be remiss not to give a near impossible full extension of gratitude to my thesis advisor, PhD, Dean, and Professor Elizabeth Shlala. Your consistent encouragement, excitement and brilliance in the discourse connecting and contextualizing the concepts of womanhood, the nation-state, and the law has been indispensable. I am so



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Finally, thank you to my family and friends for giving unconditional support in this endeavor. To my mother and aunt, you inspired an irrevocable concern for gender inequality and for configuring the ethical, fair responsibilities of the law. Your passionate interest has been encouraging and the curiosity you have instilled and shown has sparked important conversation pertinent to, and has contributed largely to, the contents of this body of work. Thank you for all you have sacrificed.

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## INTRODUCTION

United Nations Secretary General Kofi Annan declared in 1999: “Violence against women knows no boundaries of geography, culture or wealth. It is perhaps the most shameful human rights violation and perhaps the most pervasive.”<sup>1</sup> In 2018, his statement still rang true following a U.N. Office on Drugs and Crime report on how much gender-related killing of women and girls account for global homicide rates. And it is true that women are also perpetrators, but women who kill their male partners often act in self-defense, while men who kill their female partners often cite jealousy, drinking, and fears of abandonment. Not only is the home the most dangerous place for a woman to be, but on the whole, global sex ratios have worsened. According to 2015 U.N. data, there are now 101.8 men per 100 women in the world due to a surge in femicide, out of which nearly 200 million women are understood to be missing or dead. In 1992, the Convention on the Elimination of Discrimination against Women (CEDAW) confirmed gender-based violence as:

...violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts and other deprivations of liberty...<sup>2</sup>

They affirmed that violence against women was furthermore a “violation of their internationally recognized human rights” and a “form of discrimination that nullified

<sup>1</sup> “Violence Against Women ‘Most Shameful’, Pervasive Human Rights Violation, Says Secretary-General in Remarks on International Women’s Day | Meetings Coverage and Press Releases.” *United Nations*, United Nations, 8 Mar. 1999, [www.un.org/press/en/1999/19990308.sgsm6919.html](http://www.un.org/press/en/1999/19990308.sgsm6919.html)

<sup>2</sup> De Rover, Cees. *To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces*. International Committee of the Red Cross, 1998, p. 298, *To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces*.

their right to freedom, security and life.”<sup>3</sup> One of its most prominent resolutions is to ensure the equality of women and men under the law, and protect women and girls through the rule of law. As of today, the United States of America has signed, but not ratified CEDAW, while the Kingdom of Morocco ratified the convention in 1993 at the World Conference on Human Rights in Vienna with reservations. Neither country has taken nearly enough measures towards protecting its women and children from gender-based violence.

To compare the laws and the application thereof in Morocco and the United States is to compare two rather different nation-states composited of different societal and cultural norms, and legal systems. How do such different normative systems interact to perpetuate intimate partner violence? How does the nature of each nation-state allow for the overwhelming existence of male violence? The ways in which culture, religion and politics interact in both the United States and Morocco, however different they may be, reveal the multitude of ways in which the framework of the patriarchal nation-state and its legal systems induce violence in the home. Comparing the two also reveals that while the United States may be the presumed society with robust legal rights and protections for women, the pervasiveness of intimate partner violence demonstrates the enduring fight for legal resolutions. This comparison also seeks to show that the issue is cross-national and requires the complicity and complacency of “state agents and the constituencies on which they depend for power and support to foster conditions in which

<sup>3</sup> Ibid

impunity can thrive”.<sup>4</sup> It thereby reminds that cultural stereotypes that Muslim women are “uniquely” vulnerable are challenged when taking the self-critical endeavor into the means of which impunity is given to men in the United States, too. A holistic approach is necessary, but reforming the law is a crucial point of alteration for the nature of the relationship between a man and a woman.

Chapter 1 addresses the movement to internationalize the issues of intimate partner violence. While international legal bodies encourage the equality of men and women under the law, opinions regarding female subordination have divided along religio-cultural lines and the very submission of human rights standards as a Western framework. The discourse on cultural relativism features the struggle to coordinate or make compatible the foundational religious doctrine of *Shari’a* law in Muslim societies with international human rights standards.

Chapter 2 seeks to highlight the originations of the patriarchal framework in each nation-state using a socio-cultural lens. In understanding the nature of each nation-state, wherein one seems to fear the potential powers of women and the other has absolutely no fear of their subordinate counterpart, it becomes easier to understand the impunity given to men in legal doctrine. That men have always written or interpreted the law demonstrates the concept of human fallacy, offering hope that the law is far from absolute.

<sup>4</sup> Hajjar, Lisa. “Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis.” *American Bar Foundation: Law & Social Inquiry*, vol. 29, no. 01, 2004, p. 5., doi:10.1111/j.1747-4469.2004.tb00329.x.

Chapter 3 seeks to address the technical terminology of intimate partner abuse and its corresponding statistics so as to provide a working framework to understand the flaws, loopholes and omissions present in legal literature of then and now. It also explores the various forms of IPV theory that seek to understand its perpetuation. Chapter 4 explores violence and its normative value relational to Chapter 2's exploration of the origination of the patriarchal framework. Here, the purpose is to study how an abuser is created in the first place within a society tolerant of intimate partner violence, including in the home and the structure of the family, on television, in popular music and thus how abusers are sustained in the legal systems.

Chapters 5 and 6 focus on how the law tolerates intimate partner violence in the United States and Morocco, respectively. I provide a detailed interactive timeline highlighting the struggle to thrust intimate partner violence into public awareness, and the struggle to get the legislative and judicial systems to satisfy policy goals demanding legal recourse and protections for women. In the U.S. case study, I discuss the situations in which women kill their abusers and the disproportionate legal repercussions they endure as a result. In the Moroccan case study, I analyze interpretations of the Qur'an and hadith that have perpetuated intimate partner violence today.

# CHAPTER ONE

## THE HISTORICAL INTERNATIONALIZATION OF COMBATTING INTIMATE PARTNER VIOLENCE

Beginning in the 1980s and gaining credible speed in the 1990s, women's rights as human rights played a major part in international campaigns on the elimination of violence against women and prohibition of domestic violence as a human rights violation. It was in these years that the definitional matters of the home shifted from the private sphere to accountability under the jurisdiction of international law. Adopted in 1979 but enforced from 1981 onward, CEDAW mentioned above was a watershed moment. But, critics argue its language was still ambiguous in that it did not explicitly codify violence against women as a human rights violation. Such modification prompted the adoption of the Declaration on the Elimination of Violence Against Women in 1993, with Radhika Coomarswamy appointed as the first Special Rapporteur in 1994. Sociologist Lisa Hajjar reminds that she instituted multiple doctrines regarding the necessary interplay of state power and women's rights. The *doctrine of state responsibility and due diligence* affirmed that, "states have an internationally recognized responsibility and obligation to exercise 'due diligence' to prevent, investigate and punish acts by private actors that constitute violations of human rights."<sup>1</sup> Moreover, where a state fails to assume this responsibility, it is complicit in the violations committed by private actors, even if that

<sup>1</sup> Hajjar, Lisa. "Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis." (13)



means extensive non-action. And, state responsibility includes the establishment of “effective legal measures, like penal sanctions, civil remedies and compensatory provisions to protect women against domestic violence, preventative measures, including public information and education programs and preventative measures” to assist at-risk women.<sup>2</sup> A second doctrine was that of *equal protection under the law*, which operates under the assumption that international law levies an obligation on states to not discriminate on the basis of multiple protected classes, including gender. Failure to do so is directly a violation of international law by the state as a whole. This means to call out domestic violence a state and federal offense to be treated like any other act of violence deemed a crime.

It was not until 1995 at the end of the Fourth World Conference on Women that the Beijing Platform of Action<sup>3</sup> comprehensively identified specific state and cultural factors that perpetuate domestic violence and 1999 when Latin American and Caribbean feminist activists saw through an official United Nations resolution to name November 25 the International Day for the Elimination of Violence Against Women. Doing so signaled a message that the fight will be slow, but commitment robust and enduring.

However, it is important to reference back to the fact that the United States has not ratified CEDAW and while Morocco has, it did so with multiple reservations conditioned on the idea that the convention not interfere with *Shari’a* legal principles to be detailed below.

<sup>2</sup> Ibid

<sup>3</sup> Idem

## SHARI'A LAW AND THE FIGHT OVER CULTURAL RELATIVISM

Hajjar suggests, “resistance to international human rights cannot be understood as a regressive reaction to change. Rather, it must be understood as a relational response to globalization.”<sup>4</sup> There is much scholarly commentary on the critique and fear of international legal bodies as organized and executed within a western framework, ignoring the nuances of rich cultures and civilizational legacies to the deemed East. In this context, the debate has turned to whether the values of the East align with the values of the West, but most predominantly the debate on whether Islam is compatible with secularization and newly standardized human rights – ironic in the sense that champions of both ideologies struggle over making women’s rights and the abolition of domestic violence banal or commonplace. The rally against a neo-cultural imperialism has had detrimental effects on the fight for women’s rights. It has somehow packaged cultural imperialism and women’s rights as mutually exclusive, and perhaps such packaging has helped to veil the defense against the violence against women as servicing other values to the “social good”. Resistance along this vein means to maintain “social stability, male authority, and [sometimes] religion or tradition”.<sup>5</sup> Regardless of whether these are state actors or the pressure of citizens, it is the final responsibility of the state to adjudicate the law, and so it remains to be seen in many Muslim societies if the power will tilt towards international legal standards over state policy or whether “other bodies of law (like *Shari’a*) are accorded precedence when there is contradiction.”<sup>6</sup>

<sup>4</sup> Ibid., 15

<sup>5</sup> Idem

<sup>6</sup> Idem

*Shari'a* law is the religious law of Islam that takes into practice multiple sources of knowledge derived from divine cause. This includes the Qur'an, which is considered the literal word of God and His commands by believers, the *hadith*, which are witness records of the *Sunnah* (actions) and teachings by the Prophet Muhammad, and additional laws derived from Islamic jurisprudence (*fiqh*), *ijma'* (the consensus of Islamic jurists on Islamic law) and *ijtihad* (the practice of (re)interpretation based on logical reasoning and hermeneutics). Muslim jurists, specifically *mufasssir*, also write *tafsir* (Qur'anic exegesis) to clarify the word of God in light of current conditions in all social spheres. In this way, *Shari'a* functions as both a religio-cultural and legal framework for Muslim societies, and it largely accounts for family relations like divorce, custody, marriage and inheritance. The controversy even within Muslim societies surrounding *sharia's* reach into the sphere of family relations surrounds how the word of God and the complementing scripture has been recorded and interpreted by male jurists – and the mere fact that Islam was born into an already existing patriarchal society. Thus, when both the social beliefs and its imposed interpretations on religious text legitimizes the right of man to control and punish women in their family, it wholly exacerbates the legal instruction to give impunity in cases of domestic violence. As will be explained, women have pursued the jobs of *ijtihad* and *tafsir* to reform and reclaim the word of God as rooted in the equality of men and women.

## CHAPTER TWO

### THE NATURE OF THE NATION-STATE: COMPARATIVE FRAMEWORKS IN MOROCCO AND THE UNITED STATES

How has the creation of the nation-state provided the structure and nature of which patriarchy and masculinity dominate? Or, as Moroccan sociologist Fatema Mernissi, frames it: what are the foundational differences in the legalities and cultural perceptions of Western and Eastern *harems*, – “prisons that presents itself as a palace”<sup>1</sup> – and how has such inequality been perpetuated? To understand the enduring means of tolerance and impunity for men’s violence against women within a cross-national scope, one of the most important factors to analyze is the nature of the state and its creation – and particularly so, because states are “vested with the responsibility to prohibit and punish violence.”<sup>2</sup> Looking to the state first may allow us to see later on how the specific “experiences and legacies [have informed] state projects and agendas in regard to gender, family relations and women’s rights.”<sup>3</sup> Moreover, there exists an interesting, and remarkably foundational difference between the two patriarchies, specifically in how the East and West perceive women.

<sup>1</sup> Mernissi, Fatema. *“Scheherazade Goes West: Different Cultures, Different Harems.”* Washington Square Press Publication of POCKET BOOKS, 2010, p. 8.

<sup>2</sup> Hajjar, Lisa. “Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis.” (3)

<sup>3</sup> Ibid., 5

## MOROCCO: A FEAR OF WOMEN

In the Eastern *harem*, a look at Islamic scripture and Muslim oral traditions reveal an interesting origin of male self-doubt and a fear of women wherein women are represented as active, intelligent participants able to destabilize the male order, and thus must be controlled through the use of space. In other words, Islam as both a legal and cultural system is “imbued with the idea that the feminine is an uncontrollable power – and therefore the unknowable ‘other’.”<sup>4</sup> Men work to maintain their monopoly over the streets and the parliaments, and if women enter such masculine spaces, they must veil to demonstrate that they do not belong. It is quite the political statement. They behold the secondary status of a *dhimmi*, which was coined during the Ottoman Empire for “protected” religious minorities, and so are represented only by a Muslim male in the decision-making institutions. They are thus condemned to the private space so as to keep the “fiction of homogeneity alive”<sup>5</sup> in the public space. In this assessment, there begs the question, where and when did men first believe there needed to be a “battle against women?”<sup>6</sup>

Oral tradition has been a staple of Arab history but often denounced by Muslim male religious leaders as straying – that of, fantastical fiction. Considering oral tradition has countless tales of the shrewder sex being female, it would seem to contradict those Muslim laws granting male dominance over the female, making the latter point of denouncement understandable today. In fact, “throughout Muslim history the oral

<sup>4</sup> Mernissi, Fatema. “*Scheherazade Goes West: Different Cultures, Different Harems.*” (21)

<sup>5</sup> Ibid., 22

<sup>6</sup> Idem

tradition has reduced even the most tyrannical of despots to powerlessness.”<sup>7</sup> The story of Scheherazade and Shahryar in *A Thousand and One Nights* is rather case-in-point when analyzed in its original manuscript from the ninth century – separate from the ensuing Western versions that deconstruct the heroine in Scheherazade in favor of hyper-sexualization. In its original production, Shahryar is a Persian king whose wife was unfaithful to him. In an act of vengeance and later irrational demonization of the female species, he executes his wife and marries a new bride every night only to execute her the next morning. It would seem all women must pay for the action of a fellow female, a female whose betraying actions actually represent their “fatal need to topple the hierarchy built by the husband who has locked her up, by siding and copulating with his male slave.”<sup>8</sup> Such organized and imminent murder distressed his peoples, prompting Scheherazade to convince her father, the vizier and confidant of the king, to let her marry him. In preparation for her wedding night, she set forth to master a vast wealth of information in all domains of academic and cultural life so as to never fall silent to, or waver in her emotional and intellectual grasp of the king’s curiosities. In controlling this store of information, she was able to prolong her life by capturing his attention long enough to rid his heart and mind of his own pains and injustice. The story goes that her intellectual beauty and sly understanding of Shahryar and his fear of, and thus violent anger towards women, allowed her to tame him night after night, leaving the story she created open-ended each time. After one thousand and one nights, the king falls in love

<sup>7</sup> Ibid., 5

<sup>8</sup> Ibid., 45

with Scheherazade, making her his queen and relieving his peoples of retributive punishment. She comes to represent women as “civilizing agents” who blur humanism and feminism in a plea for harmony – “civilization will flourish when men learn to have an intimate dialogue with those closest to them, the women who share their beds.”<sup>9</sup> She had, in fact, shown him his abuse of kingly power and he realized his violence against women as regrettable. Such respectful intimacy in the Muslim world today necessarily harkens on the chance to eradicate despotic violence in the state and home.

Additionally, subsequent key messages elucidate the foundations of male and female interactive existence as proposed by Abdesselam Cheddadi, a Moroccan historian, professor, and scholar of Islamic historiography. First, the tale of Scheherazade demonstrates Shahryar’s discovery that “to force a woman to obey marital law is an impossibility,”<sup>10</sup> and such imbalanced constrictions will result in tragedy. The second message proves the “cosmic conflict” between Shahryar as the masculine, objective order of the “Day” and Scheherazade as the feminine, subjective order of the “Night”. In this struggle, the King does not kill Scheherazade, instead making her his queen. What this reveals to Muslim men is a confused approach to female treatment, fumbling in “unbearable uncertainty regarding the outcome of the battle.”<sup>11</sup> This struggle with configuring a binary antagonism between the two genders stem from something so fundamental in their beliefs.

<sup>9</sup> Ibid., 50

<sup>10</sup> Ibid., 53

<sup>11</sup> Idem

As Asma Barlas, a Pakistani-American academic and scholar of Islamic hermeneutics, argues, the Qur'an does not define men and women as two binary oppositions, in which men are the Subject and women are the Other, but as two whole differences. Such a dismissal of binaries favors the "theme that women and men commenced from a single self (نفسه) and constitute a pair is integral to Qur'anic epistemology."<sup>12</sup> It is therefore interesting to compare the Creation story of the Qur'an as opposed to the Creation story in the Bible. In his version of *A Thousand and One Nights*, Edgar Allen Poe likens Scheherazade to Eve, which seems a moot task when considering the absence of inequality between the two genders in the Qur'an. The Creation story in the Qur'an removes the condemnation of Eve and attention towards Adam's self-discipline and rationality. Because they originated in the same Self, both sexes have the same *fitra* or nature.<sup>13</sup> Barlas uses Abdullah Yusuf Ali's translation of the Qur'an,<sup>14</sup> which reads:

God has made for you / Mates (and Companions) of your own nature / And made for you, out of them / Sons and daughters and grandchildren / And provided you with sustenance / Of the best... (Qur'an 16:72; in Ali, 675)

Examined through this human ontology, one cannot dictate the principle of inequality between a man and a woman. But, the inherent inequality taught through the story of Adam and Eve allows for the violence that Poe condemns Scheherazade to, and favors

<sup>12</sup> Barlas, Asma. "Believing Women in Islam: Un-reading Patriarchal Interpretations of the Qur'an." *University of Texas Press* 2003, p. 183.

<sup>13</sup> Ibid

<sup>14</sup> Dawood, N.J. *The Koran: Translated with Notes by N.J. Dawood*. Penguin Books, 2014.



the kind of “suspenseful immobility”<sup>15</sup> when Shahryar’s own law is challenged by his desire for her intellectual sensuality.

In reference to Cheddadi’s analysis of the omen of Scheherazade’s story, justice against women in the Muslim world is still “camouflaged,” albeit not very well, as sacred law. Male-created and enforced marriage and divorce laws are still institutionalized by sacred law. However, this does not mean it is emotionally accepted by women. They do not feel they ought to be bound or destined by these laws. They defy and dissent through invading the public space. They protest on the streets, defend themselves against male clerics and judges for divorce rights in courts, and rebel on the stage representative of intellectual fortitude through infiltrating masculine professions – such feminist strength is reminiscent of the power they get from oral tradition, just like Scheherazade.

#### **THE UNITED STATES: FEAR NO WOMEN**

In the Western *harem*, there is no such fear of women. A preference towards the passive and obedient woman exposes a self-assured, heroic perception that denies that which is the strongest weapon of a woman: her intellect. This seems a paradoxical system in which the story of Scheherazade out West – the land of enlightened rationality, democracy and human rights – strips her mind and emphasizes her body. Her “brainy sensuality”<sup>16</sup> is robbed in the face of violence, thus allowing Poe to kill her off in his version.

<sup>15</sup> Mernissi, Fatema. “*Scheherazade Goes West: Different Cultures, Different Harems.*” (53)

<sup>16</sup> Ibid., 62

In exploring the influences on the creation of the American nation-state, thus hinted to by Poe's spin on the Scheherazade tale, Immanuel Kant and others of the Enlightenment era made impact. It is not a stretch to suggest that in philosophizing politics, he made foundational claims of who belongs in such a space. In his *Observations on the Feeling of the Beautiful and Sublime*, the sublime refers to the capacity to think or to "rise higher than the animal and the physical world," while the beautiful refers to the "finer feeling" programmed in women. She must resign her abilities regarding "'deep understanding, abstract speculations, or branches of knowledge useful but dry,' and leave them to men."<sup>17</sup> He posits man and woman against each other directly in dividing the space into beauty (femininity) and intelligence (masculinity), thus revealing that the ideal woman is "speechless [and to exhibit] knowledge kills femininity altogether."<sup>18</sup>

Additionally, in establishing the progressive, democratic nation-state in 1776, Abigail Adams wrote to her husband John Adams a feminist caution. When writing the constitution for the United States, she warned:

I desire you would remember the ladies and be more generous and favorable to them than your ancestors. Do not put such unlimited power in the hands of the husbands. Remember, all men would be tyrants if they could. *If particular care and attention is not paid to the ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation.* [...] That your Sex are Naturally Tyrannical is a Truth so thoroughly established as to admit of no dispute, but such of you as wish to be happy willingly give up the harsh title of Master for the more tender and endearing one of Friend. Why then, not put it out of the power of the vicious and the Lawless to use us with cruelty and indignity with impunity. *Men of Sense in all Ages abhor those customs which treat us only as the vassals of your Sex.* Regard us then as Beings placed by providence under your protection and in

<sup>17</sup> Ibid., 90

<sup>18</sup> Ibid., 91

imitation [sic] of the Supreem [sic] Being make use of that power only for our happiness.<sup>19</sup>

There seems a similar reverence against the laws created to control women and omit their “voice or representation,” and it is perhaps in this reverence and push for defiance in the United States as in Morocco, that the masculine method of violence finds itself a necessary tactic to ensure male vanity and supremacy. She cautions against the culture of objectivity that reduces women to “vassals” as a complete erasure equitable to the preference for brainless beauty in the feminine being. Such terminology exposes the lack of internal threat that a woman poses in the Western *harem*, and more poignantly, how President Adams did not take his wife’s rational suggestions into consideration when defining the nature of the nation-state.

Thus, the Western *harem* does not use space in necessarily the same way. Rather, the weapon used against women here is time. The brainless beauty represents a child-like ignorance conjoined with youthful attraction. Time weaponized here is demonstrated by conditioning the standard of beauty “on the female child and framing her as the ideal of beauty,” thereby condemning the mature, intellectual woman to “invisibility”.<sup>20</sup> Such systemic control permeates into the economy of the nation-state – another avenue in which men are conditioned to believe they must exhibit success in, and will be attended to in later chapters. As progressive feminist author and former political advisor, Naomi Wolf shows, men have constructed powerful industries like the annual \$33-billion diet

<sup>19</sup> “Letter from Abigail Adams to John Adams, 31 March – 5 April 1776.” *Letters from Abigail Adams to John Adams, 31 March – 5 April 1776*, Adams Family Paper: An Electronic Archive. Massachusetts History Society., [www.masshist.org/digitaladams/archive/doc?id=L17760331aa](http://www.masshist.org/digitaladams/archive/doc?id=L17760331aa).

<sup>20</sup> Mernissi, Fatema. “*Scheherazade Goes West: Different Cultures, Different Harems*.” (213)

industry, the \$20 billion cosmetic industry, the \$300-million cosmetic surgery industry, and the \$7-billion pornography industry.<sup>21</sup> She suggests that such industries have “arisen from the capital made out of unconscious anxieties, and are in turn able, through their influence on mass culture, to use, stimulate, and reinforce the hallucination in a rising economic spiral.”<sup>22</sup> It is a fraudulent method of dividing women, making even their own femininities suspicious in times of great pain and violence. Youth is “beautiful” in women since they represent “experiential and sexual ignorance” while aging in women is “unbeautiful” since women realize their power with time – a threat to institutionalized patriarchy. As such, the generations of women are pinned against each other, allowing the beauty myth to “truncate for all the female life span.”<sup>23</sup> Female identity as determined by beauty thereby remains vulnerable to external sanctions. A belief system premised on the female body as the property of society and consequently those who dictate societal norms creates an assumption of a right by others to control the female body, referring to a range of methods from sexual expectation, to reproduction, to the space of the female intellect. This “beauty” is the “last, best belief system that keeps male dominance intact”<sup>24</sup> and such symbolic violence blurs rather quickly into patterns of physical and sexual abuse in the home.

One may question where the strength of female agency or their willpower to decidedly affront the norms lies. In simple terms, the institutionalized suppression and

<sup>21</sup> Wolf, Naomi. “The Beauty Myth: How Images of Beauty are Used Against Women.” *Harper Perennial*. 2002, p. 17.

<sup>22</sup> Ibid

<sup>23</sup> Ibid., 14

<sup>24</sup> Idem

control of women is a tireless effort by its architects, and women are exhausted.

Feminism promoting the feminine mystique broke the monopoly on the women's popular press of advertisers for household products, but then almost at once, the "diet and skin care industries became the cultural censors of women's intellectual space, and because of their pressure, the gaunt, youthful model supplanted the happy housewife as the arbiter of successful womanhood."<sup>25</sup> The sexual revolution led by feminists called for a reclaiming of pride in female sexuality and its exploration, to which "beauty pornography" which "links a commodified 'beauty' directly and explicitly with sexuality" invaded the mainstream. And when women politicized health in promotion of retaining their bodily rights, new technologies of "invasive, potentially deadly 'cosmetic' surgeries developed apace to re-exert old forms of medical control of women."<sup>26</sup> Women's agency is distracted and dismayed by the beauty myth. It is an exhaustive fight in the courtroom, on the streets, and in the home.

Such conflicting convictions as to why the woman must be suppressed show dynamic systems of male dominance in both the Muslim and Western worlds. As Mernissi surmises, perhaps violence against women is due to the recognition of female intellectual power in Morocco and the obsession with veiling and harassing them if not covered properly, while in the United States women are considered incapable of "deep or analytic thought"<sup>27</sup> and the intellect is positioned to focus on the beauty myth. This perception reduces women to objects men take pleasure in unveiling, leaving women in a

<sup>25</sup> Ibid., 11

<sup>26</sup> Ibid

<sup>27</sup> Mernissi, Fatema. *"Scheherazade Goes West: Different Cultures, Different Harems."* (95)

perpetual state of physical insecurity and vulnerability to manipulation and violence. Luckily, when we consider that both the ruling legal systems were born into patriarchal societies, the nature of their legitimacy begs constant reform to accommodate time evolved. In other words, while the question of divinity persists regarding *Shari'a* law, both legal systems were interpreted by humans and so are not above human fallacy. With this, reformation and expulsion of inequitable law and its accompanying inequitable biases is possible.

## CHAPTER THREE

### DEFINING THE ABUSE & INTIMATE PARTNER VIOLENCE THEORY

In defining and categorizing abuse, the most prominent relationship to acknowledge is how violence is administered and perpetuated vis-à-vis masculine and feminine methods – the former defined here and the latter defined in a later chapter. To define the abuse means to acknowledge its existence and scope, which is an important first step in changing the statistics against female victimization today. The Center for Disease Control defines intimate partner violence (IPV) as physical and/or sexual violence, stalking or psychological injury by a current or former partner or spouse.<sup>1</sup> It is the leading cause of injury to women, with IPV occurring to 1 and 4 women and killing every six hours an intimate partner in the United States. In Morocco, the Moroccan High Commission for Planning found in 2009 that nearly 63 percent of women aged 18 to 65 experienced physical, psychological, sexual or economic violence, with 55 percent reporting “conjugal” or IPV and 13.5 percent reporting “familial” violence.<sup>2</sup> Worldwide, the United Nations Office on Drugs and Crime 2018 report on female homicides found that women killed by intimate partners or family members account for 58 percent of all female homicide victims reported globally.<sup>3</sup> That is, 137 women across the world are

<sup>1</sup> “Intimate Partner Violence | Violence Prevention | Injury Center | CDC.” *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, 23 Oct. 2018, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html>.

<sup>2</sup> “Morocco: Tepid Response on Domestic Violence; Strengthen Laws, Provide Protection, Justice, Services.” *Human Rights Watch*, 16 Feb. 2016, [www.hrw.org/news/2016/02/15/morocco-tepid-response-domestic-violence#](http://www.hrw.org/news/2016/02/15/morocco-tepid-response-domestic-violence#).

<sup>3</sup> Fedotov, Yury. “Global Study on Homicide: Gender-related killing of women and girls.” *United Nations Office on Drugs and Crime*, Vienna, Nov. 2018, p. 10.

killed by a family member every day, with more than a third of women intentionally killed by a current or former intimate partner.<sup>4</sup>

## **DEFINING THE ABUSE**

The *APA Task Force on Violence and the Family* defines intimate partner violence as a pattern of abusive behaviors used by one person to gain and maintain power and control over another. It can either result in injury, psychological harm, mal-development or even death.<sup>5</sup> The nature of domestic violence happens within the context of an interpersonal relationship, including violence between a husband and a wife, a girlfriend and boyfriend, or gay or lesbian partners. But, it often includes estranged partners or ex-partners, as well. However, the focus of this paper rests on heterosexual intimate partner relationships because the majority of such violence occurs by men against women thereby having, at this time, a much more severe affect in public health terms.<sup>6</sup>

According to the National Intimate Partner and Sexual Violence Survey, IPV includes physical violence, sexual violence, stalking, and psychological aggression including coercive tactics by a current or former intimate partner. An intimate partner is a romantic or sexual partner varying from spouses to boyfriends, girlfriends, people with whom victims dated, were seeing, or “hooked up.”<sup>7</sup> IPV victimization can result in

<sup>4</sup> Ibid

<sup>5</sup> Rakovec-Felser, Zlatka. “Domestic Violence and Abuse in Intimate Relationships from Public Health Perspective.” *NCBI: Health Psychology Research*, vol. 2, no. 3, 22 Oct. 2014, doi:10.4081/hpr.2014.1821

<sup>6</sup> Ibid

<sup>7</sup> D’Inverno, A.S., Smith, S.G., Zhang, X., Chen, J. (2019). “The Impact of Intimate Partner Violence: A 2015 NISVS Research-in-Brief.” Atlanta, GA: *National Center for Injury Prevention and Control, Centers for Disease Control and Prevention*, p. 2.



multiple damages. These can include psychological and physiological trauma, like being fearful or concerned for their or loved ones' safety, post-traumatic stress disorder (PTSD), injury, or in need of medical care, which in turn can result in missing days of work or school, and sexually transmitted infections or pregnancy. It can also include needing services in housing, victim advocacy, legal, or law enforcement. In the most horrifying of cases, IPV victimization can result in murder, murder-suicide, or familicide, wherein the perpetrator kills multiple family members.

It is important to note that the cycle of abuse is not often an expectation of abuse daily. Often, in intimate partner relationships, the abuser oscillates between violent, abusive and apologetic behaviors followed by sincere promises to change and periods of pleasant interactions before another violent episode.<sup>8</sup> Additionally, the pleasant periods may include the subtler forms of abuse explained here, such as emotional or financial abuse. In other words, there are an estimated four stages in the cycle of abuse: (1) a period of tension building in which an “abuser starts to get angry, communication breaks down, victim feels the need to concede to the abuser, tension becomes too much, and the victim feels uneasy”;<sup>9</sup> (2) a period of acting out in which any type of abuse occurs; (3) the honeymoon period in which the abuser apologizes for the abuse, some beg for forgiveness and shows mournful concern promising that it will never happen again, some blame the victim for provoking the abuse, or some deny that abuse ever occurred, and; (4) the calm period in which the abuse tops, the abuser acts like the abuse never

<sup>8</sup> Rakovec-Felser, Zlatka. “Domestic Violence and Abuse in Intimate Relationships from Public Health Perspective.”

<sup>9</sup> Ibid

happened, promises made during the honeymoon period may be met, abuser may participate in gift-giving to the victim, or the victim believes or wants to believe that the abuse is over that that have changed.<sup>10</sup> Such drastic patterns that always cycle back to abuse helps to explain the difficulties victims have in breaking the relationship. That their abusive partner has periods of love and apology perhaps confuses the victim into seeing those affectionate interactions and kind dispositions they fell in love with previously, which perhaps can serve as a coping mechanism for the abuse they may be subjected to in the future. It also complicates a severance of the relationship when the woman decides to end it. Former partners can still abuse their victims through harassment, stalking and physical harm. In fact, a U.S. study showed that some 70 percent of reported injuries from domestic violence occurred after the separation of the couple.<sup>11</sup>

There are six relevant types of abuse to be defined, as provided by *Reach: Building Healthy Communities by Ending Domestic Violence*.<sup>12</sup> They are physical, sexual, emotional/verbal, mental/psychological, financial/economic, and cultural/identity. According to scholar and social activist, Ellen Pence and her creation of the Duluth Model, physical violence makes a victim feel physically unsafe and can include punching, slapping, kicking, strangling, or physically restraining a partner against their will.<sup>13</sup>

Sexual violence can also be physical but it is not necessary. It can include rape or other forced sexual acts, or the use of it as a weapon. An abusive partner may use sex as a

<sup>10</sup> *Idem*

<sup>11</sup> *Idem*

<sup>12</sup> “6 Different Types of Abuse.” *REACH*, 23 Mar. 2017, [reachma.org/6-different-types-abuse/](http://reachma.org/6-different-types-abuse/).

<sup>13</sup> *Ibid*

means to judge their partner and “assign a value” by criticizing their abilities or belittling them to believing sex is all they are good for.

Verbal or emotional abuse is committed through weaponizing words to manipulate or disparage their partner. While not physical, and thus harder to see or prove, it can be just as enduring and lethal as it mortifies the victim’s psyche.

Mental or psychological abuse is an abuse of endurance. An abusing partner can wear down their partner’s sense of self, health, and well-being through a sustained period of actions or words. In many cases, it can be a form of gas-lighting a partner into believing they are responsible for the other’s violence which puts the blame on the victim, that the abuse never happened which minimizes or denies the violence, or make the victim doubt their own sanity.

Financial abuse is often the sustained effort of one partner to make the other financially dependent. This use of power and control accounts for household budgeting, prohibiting a partner to have or have access to their own bank accounts or money, or not letting the victim have a job and earn their own money. An abuser may even open credit cards in their partner’s name to put them in debt and acquire a bad credit score which can affect their ability to get an apartment, a job, a car loan, and anything else needed for self-sufficiency.<sup>14</sup> Such abuse makes it physically much more difficult to leave.

Cultural abuse happens when a victim’s cultural identity is used against them in harmful ways, such as prohibiting their partner to observe the dietary or dress customs of their faith, using racial slurs, threatening to “out” someone as LGBTQ+, or isolating

<sup>14</sup> Idem

someone who doesn't speak the dominant language where they live.<sup>15</sup> In cases of the latter form, this can be accompanied with threats of deportation.

## **INTIMATE PARTNER VIOLENCE THEORY**

Per IPV theory, there are three theoretical perspectives to note according to the *National Institutes of Health (NIH)*: feminist, conflict, and social learning. This paper considers all three to understand the immense gender inequalities in our systems and to consider how an abuser at all comes to be. In the feminist approach, gender inequality is highlighted as a major fact in heterosexual violence and that the abuse of a woman is directly connected to the patriarchal framework of society thereby reflecting the patterns of behaviors and feelings toward women.<sup>16</sup> A feminist understanding of domestic violence deems the violence as an expression of social power and as a means for men to control their female counterparts. It emphasizes the different social institutional paradigms that create a tolerance towards the use of physical violence, particularly the patriarchal organization and nature of the family and society. The conflict approach dives deeper into the organization of the family and society. It recognizes both the public and private spheres as involving “a conflict between their members and their divergent interests” whereby when “different interests produce conflicts, aggression and violence are the way that individuals may utilize to resolve the situation in their favor, particularly when other strategies fail.”<sup>17</sup> The social learning theory differs from the feminist and conflict theories in that the latter address social structural conditions in society and family

<sup>15</sup> Idem

<sup>16</sup> Rakovec-Felser, Zlatka. “Domestic Violence and Abuse in Intimate Relationships from Public Health Perspective.”

<sup>17</sup> Ibid

while the former explains for family interaction patterns that foster violence. The majority of behavior is learned through “observation, imitation and reinforcement” in which likely a child learns to configure the probable rewards and punishments prior to acting violently. The reactions from others that they observe are then used to develop “implicit rules” to be applied to perhaps similar contexts when they grow up. Through the direct experiences of observing a violent father towards the mother or they themselves as the child formulates the acceptable and even expected guidelines for behavior. The resultant violent behavior suggests that modeling and reinforcement are two of the most “important processes in learning aggressive behavior.”<sup>18</sup> The question then poses a search for how such patriarchal organization and framework came to be in the first place – how might these theoretical approaches be reformed to transmit behaviors of peace and equality instead?

<sup>18</sup> Idem

## CHAPTER FOUR

### VIOLENCE AND ITS NORMATIVE VALUE: HOW AN ABUSER IS CREATED AND SUSTAINED

While the purpose here is to provide context and illustrate the gaps, dysfunctions and loopholes in the legal system that usually serve to fail victims of IPV, it is crucial to first focus on the abuser. Otherwise, one might fear that too strong of a focus on victims – be it through teaching them how to cope, how to escape, or scorning the legal institutions into allotting both retributive and restorative justice – might inherently place the burden of survival on them rather than the abuser. It would seem fitting, then, to start at the birth of the potential abuser and their social context to understand the uncomfortably intimate evils in the home, which may illuminate progressive, preventative means to the problem. Using Lori Heise’s *Integrated Ecological Model* (1998) as a general framework permits an analysis of a litany of more recent scholarly work pertaining to the five respective circles detailed below. This is to show how regressive cultural and social norms and gender-based biases, such as domination and hyper-sexualization, form a toxic “cultural realm of tolerance”<sup>1</sup> toward IPV. The model and its analysis intend to demonstrate how both society and the law “fuel, normalize, and minimize”<sup>2</sup> the toxic culture of IPV.

<sup>1</sup> Breger, Melissa L. “Reforming by Re-Norming: How the Legal System has the Potential to Change a Toxic Culture of Domestic Violence.” 44 *Notre Dame Journal of Legislation*, vol. 2, SSRN, 19 Apr. 2018, [ssrn.com/abstract=3165262](https://ssrn.com/abstract=3165262), p. 170.

<sup>2</sup> Ibid., 183

The *Integrated, Ecological Model*, which shows the likelihood of a learned abuser, has five elliptical circles representing broadly the norms at work or the relevant risk factors in cultural systems. The first and smallest represents the individual and their early exposure to IPV in the family, their education, and employment status and history. The second represents relationships known to the abuser and involve things like marital conflict, structure of family and male control of decision-making. The third is community which accounts for isolation, negative associations and socio-economic challenges. The fourth is society representing rigid gender roles, social norms yielding control to men over women, tolerance of men violating women and overly aggressive masculinity. Lastly, the fifth and largest circle represents overall larger society like gender inequality, the legal system, laws and sanctions.

#### **CIRCLE 1: EARLY EXPOSURE TO INTIMATE PARTNER VIOLENCE**

A child's first interaction with intimate relationships is often in observation of their parents' partnership. While it is not a necessary prerequisite for abusers to have grown up witnessing marital conflict, a majority of IPV cases show that it has had a negative impact on their adult relationships. In fact, children's exposure to IPV is the number one health problem for children in the United States,<sup>3</sup> with 275 million children in the world and more than 10 million in the U.S. witnessing this abuse on average in a year.<sup>4</sup> In Morocco, a 2013 case study on 265 women in Marrakech alone confirmed that in 63.6 percent of the domestic violence cases, the children were witnesses and in 25

<sup>3</sup> Hungerford, Anne, et al. "Children's Exposure to Intimate Partner Violence: Relations between Parent-Child Concordance and Children's Adjustment." *Violence and Victims*, U.S. National Library of Medicine, 2010, [www.ncbi.nlm.nih.gov/pubmed/20514816](http://www.ncbi.nlm.nih.gov/pubmed/20514816)

<sup>4</sup> *Behind Closed Doors: The Impact of Domestic Violence on Children*. UNICEF, 2006.

percent of the overall cases, the children were victims of violence at the same time as their mothers.<sup>5</sup>

Associate professor and researcher in social work at the University of Manitoba, Kendra Nixon, analyzed the child-parent relationship with exposure to domestic violence and how such effects show up in later relationships. She proved a correlation between children that have been “exposed to domestic violence and those that go on to abuse their own families or when in other relationships.”<sup>6</sup> A look through a socio-psychological lens garners evidence demonstrating an experience in delays to cognitive and emotional development, extreme withdrawal or aggression, anxiety disorders, and the problematic internalization or externalization of behaviors.<sup>7</sup> These developed responses to trauma are “likely to produce long-term intergenerational cycles of abuse if not treated early,”<sup>8</sup> as suggested by *attachment theory*. *Attachment theory* proposes that “children develop maladaptive internal working models of relationships when caregivers are consistently unreliable, absent, or unresponsive. IPV produces intense anger, anxiety, fear and grief and impedes the child’s ability to develop a trusting relationship and secure attachment to their caregiver.”<sup>9</sup> University scholars and professors in social work Antle, Barbee, Yankeelov and Bledsoe found in their research studies that even beyond the

<sup>5</sup> Manoudi, F., et al. “Violence Familiale.” *L’Encéphale*, vol. 39, no. 4, 28 Mar. 2013, pp. 271-277., doi:10.1016/j.encep.2012.03.007.

<sup>6</sup> Pingley, Terra. “The Impact of Witnessing Domestic Violence on Children: A Systematic Review.” *St. Catherine University, University of St. Thomas, School of Social Work*, 2017, Sophia.stkate.edu/msw\_papers/776

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Lawson, David M. “The Development of Abusive Personality: A Trauma Response.” *Journal of Counseling & Development*, vol. 79, no. 4, 23 Dec. 2001, pp. 505-509., doi:10.1002/j.1556-6676.2001.tb01998.x.



psychological effects, children who witness domestic violence are often physically abused as well, resulting in a loss of psychological structures like a sense of self and body integrity.<sup>10</sup> If such children lack self-esteem, there is not much to support in their honoring the integrity of others should they cope through problematic externalized behaviors.

In her research, Terra Pingley highlights university professor Howard Meltzer's work in mental health, noting that in boys, the effects of witnessing domestic violence largely results in externalized behaviors such as aggression or disobedience, whereas girls show more internalized behaviors like anxiety and depression.<sup>11</sup> Such evidence gives way towards the circles representing cultural norms wherein boys "learn" how to be violent and girls "learn" the submissive tendencies to perhaps tame the abuse. This tendency is an example of *social learning theory*, which explains that while not always the case, children exposed to parental violence are more likely to experience violence themselves and go on to exhibit violent actions against others.<sup>12</sup> It is not innate in men; it is a learned response of young boys who witness the violence of their fathers and the consequent aggression in adulthood likely feels like an automated and chronic response to negative events. Additionally, it is likely a continuous compensation for superiority against the rooted sentiments of inferiority and lack of control experienced in childhood. In other

<sup>10</sup> Pingley, Terra. "The Impact of Witnessing Domestic Violence on Children: A Systematic Review."

<sup>11</sup> Ibid

<sup>12</sup> Idem

words, the adulthood aggression is a result of “emotional and developmental scars”<sup>13</sup> that can damage the sense of self.

## **CIRCLE 2: FAMILY STRUCTURE AND MALE CONTROL OF DECISION-MAKING**

The second circle representing the relationships known to the abuser such as the familial structure can suggest why a child may normalize violence as a valued means of reclaiming or maintaining control. The aforementioned *conflict approach* recognizes both the public and private spheres as involving “a conflict between their members and their divergent interests” whereby when “different interests produce conflicts, aggression and violence are the way [in which] individuals may resolve the situation in their favor, particularly when other strategies fail.”<sup>14</sup> Combined with the *feminist approach*, a child that grows up in a private sphere in which conflict is resolved by force fosters a social environment wherein family violence is tolerated and gender roles are hardened in a learned response to that violence. This tends to derive from a patriarchal arrangement and nature of the family. Further, if one or more caregivers participate in violent acts as a tool for punishment or discipline, a child is taught rather directly that a subordinate is subject to violence by an authoritative figure with little other consequence.

Bearing in mind that childcare within Middle East and North African (MENA) region is considered a private matter according to their family structure, it is difficult to find data on how both the mother and father view their obligations to their children. Nevertheless, in Morocco, children are often beaten by their parental figures as a means

<sup>13</sup> Heise, Lori L. “Violence Against Women: An Integrated Ecological Framework.” *SAGE Journals*, vol. 4, no. 3, 1 June 1998, p. 268., doi:10.1177/1077801298004003002.

<sup>14</sup> Ibid

of discipline. In fact, 85 percent of children aged 2 to 4 experienced violent discipline and 25 percent experienced severe physical punishment as of the 2017 data published by UNICEF.<sup>15</sup> However, this does not mean to necessarily gauge their overall parenting quality and it tends to differ between urban and rural settings.

In 2012, the Brookings Institute surveyed American interest in using physical punishment on their children and found that 70 percent of Americans believe that “it is sometimes necessary to discipline a child with a good, hard spanking.”<sup>16</sup> They note that there is, however, a wide range in how people define “acceptable,” both in terms of frequency and severity. A spanking once a month has little effect on child brain development and linkages to social behavior, but frequent spanking may have severe effects and negative associations. Multiple studies find that using physical discipline on your children has the exact opposite effect – rather than correcting bad behavior, children may learn to associate violence with power or as a means to getting what you want immediately. Such an association combined with the risk of other mental health issues, like anxiety, depression, alcohol and drug abuse, and distant parent-child relationships tend to correlate heavily with their own perpetuation of aggression and intimate partner violence.

Additionally, the Brookings Institute highlights an experimental study done in 2009, which demonstrates that consistent physical punishment leads to slower cognitive

<sup>15</sup> *A Familiar Face: Violence in the Lives of Children and Adolescents*. UNICEF, 2017, p. 22, *A Familiar Face: Violence in the Lives of Children and Adolescents*.

<sup>16</sup> Cuddy, Emily, and Richard V. Reeves. “Hitting Kids: American Parenting and Physical Punishment.” *Brookings*, Brookings, 26 Oct. 2014, [www.brookings.edu/research/hitting-kids-american-parenting-and-physical-punishment/](http://www.brookings.edu/research/hitting-kids-american-parenting-and-physical-punishment/).

development or other behavioral problems creating a slew of roadblocks in the future. It may first take noticeable effect in the classroom wherein vocabulary is slow to progress, math skills are stunted and such a risk of academic failure increases their anxiety and chances of lashing out. Outside of the classroom, such a slow development complicates social and socio-economic mobility, which in itself is a risk factor for violence as an adult.

#### **CIRCLES 3 & 4: COMMUNAL AND SOCIETAL TOLERATION OF AGGRESSIVE MASCULINITY**

In analyzing the third and fourth circles representing community and society, the hegemonic masculinity perspective<sup>17</sup> is a concept that creates a patriarchal system that marginalizes and subordinates women. In a paper on mass shootings and violence against women, Yasmine Issa demonstrates through this concept three stressors that trigger violence in a man when they are found to be emasculated in some way, either economically, socially or sexually. One stressor is the ability to maintain upwards employment and economic independence, and any infringement to this triggers rage. A second stressor is the ability to exert social dominance and command respect, thus when they experience bullying, isolation or harassment, they look for revenge. A third is the ability to demonstrate romantic and sexual success, and when they experience divorce, breakup, or rejection, they must compensate for their emasculation by reasserting themselves through violence.<sup>18</sup>

<sup>17</sup> Issa, Yasmine. "A Profoundly Masculine Act: Mass Shootings, Violence Against Women, and the Amendment That Could Forge a Path Forward." *Berkeley Law: University of California*, vol. 107, no. 2, Apr. 2019, doi:10.15779/Z382V2C98F.

<sup>18</sup> Ibid

Furthermore, the cultural and social norms surrounding violence as a mode towards conflict resolution and self-expression tend to persist within society because of an “individuals’ preference to conform, given the expectation that others will also conform”.<sup>19</sup> Violating such a social norm may conjure social disapproval or punishment, and this is demonstrated by deconstructing different cultural and social norms between different social groups. One camp is the traditional beliefs<sup>20</sup> that men have a right and duty to control and discipline women through physical and sexual means, following a patriarchal, or father-to-child model instrumentalized on a cross-cultural, cross-national scale. It is not a far leap to suggest that such a traditional belief makes women very vulnerable to IPV, and places girls at risk of sexual abuse. Traditional beliefs may coincide with religious beliefs as well, which can condemn or shame a victim of sexual abuse for having engaged in pre-marital sexual experiences – regardless of their consent. Religious beliefs may also lean into sacred texts for justifications of violence, particularly violence committed by husbands towards their wives. Such matters are thus restricted to the private sphere, making the torment rather impassable by outside interventions. Another example is the strong association between alcoholism and violent behavior.<sup>21</sup> Cultural and social norms around alcohol use and its expected effects “can also encourage and justify”<sup>22</sup> violent acts, which tend to undermine the severity of the crime and encourage the victim to stifle their traumas. In fact, societies that “tolerate higher

<sup>19</sup> *Violence Prevention: Changing Cultural and Social Norms That Support Violence*. World Health Organization, 2009, p. 4, *Violence Prevention: Changing Cultural and Social Norms That Support Violence*.

<sup>20</sup> Ibid

<sup>21</sup> Idem

<sup>22</sup> Idem

rates of acute alcohol intoxication report a stronger relationship between alcohol use and violence.”<sup>23</sup> Moreover, the focus shifts from the man’s violence to his alcoholism as the root issue at play.

Also, the perpetuation of artistic modes, such as music and television, that promote gender-based violence and overt hyper-sexualization of the female body have doomed the male brain to pursue control. In both the United States and Morocco, both male and female singers are responsible for abetting the male hierarchy. For example, Moroccan singer Adil El Miloudi has a history of statements charged with condemnation against men who do not use violence as a form of controlling their wives. On Chada TV’s Kotbi Tonight show, a popular Moroccan talk-show, Miloudi remarked that husbands who “don’t beat their wives aren’t real men” and explained that Moroccan men can do whatever they want with their wives including “beating or even killing them”. In his song, *Kifach Houma Mahadrouch* (2015), he attacks Moroccan actress Loubna Abidar for appearing in a film’s sex scene titled *Much Loved*, singing, “Loubna Abidar, today, you are in danger. Everyone knows what you did, it will bring you only misfortune.”<sup>24</sup> He has weaponized the art of music to threaten women to remain in the private space and normalized, even encouraged, violence as a mode to ensure their confinement.

Female Moroccan singer, Imane bint El Howat released a song in 2017 rewarding and normalizing men’s abuse against women. Some of her lyrics include: “If she tastes his beatings, she won’t forget his love” and “They say beating comes from paradise, the

<sup>23</sup> Idem

<sup>24</sup> Nabbout, Mariam. “Moroccan Singer Thinks Men Who Don’t ‘Beat Their Wives’ Aren’t Real Men.” *StepFeed*, 9 Sept. 2019, [stepfeed.com/moroccan-singer-thinks-men-who-don-t-beat-their-wives-aren-t-real-men-7797](http://stepfeed.com/moroccan-singer-thinks-men-who-don-t-beat-their-wives-aren-t-real-men-7797).

one who tastes it gets peace”.<sup>25</sup> When she received backlash, she stood her ground, stating, “How else will a woman know her husband loves her and cares about her? I am not supporting violence, a man that would take a woman and beat her or scar her forever. No, I am for the sweet beating.”<sup>26</sup> The message here is plain but nonetheless shocking to the conscience. The nuanced opinion she has in which she rationalizes types of abuse as either scarring or sweet is odd. It serves to demonstrate the complexity of the issue even among women in Morocco depending largely on the geo-cultural backgrounds they grow up in. Nevertheless, her lyrics hurt the feminist movements, be it either the liberal or the Muslim divisions, which will be discussed in greater detail in a following chapter. The overtly misogynistic rhetoric from both artists were overall received very poorly by Moroccan popular media, condemning the musicians’ regressive and distasteful actions that only work to re-institute the traumas of domestic violence.

Additionally, in 2016, a morning talk show on Morocco’s state television aired a segment on how to effectively use makeup to conceal bruises caused by interpersonal violence. Strangely, it was part of an effort to promote the *International Day for the Elimination of Violence Against Women*. While the reaction was immediately negative and the TV station issued an apology, the mere fact that it aired at all reflects the insensitive sentiments regarding domestic violence. The station’s intention was to show women how they may go about their everyday lives despite the bruising, but completely misses the mark by making this a women’s issue to configure ways to tolerate men’s

<sup>25</sup> Ibid

<sup>26</sup> Idem

violence against them. As Sarah Kambou, the president of the International Center for Research on Women remarked, “the negative consequence is the message they’re sending to men: Your behavior can be covered up,” literally and figuratively.<sup>27</sup>

In the United States, a significant portion of music today, particularly emphasized in the R&B, Hip-Hop, and Rap genres, has diverted to beyond the romantic or lustful attraction between a man and a woman, now comfortably celebrating adultery, female sexual humiliation, and male dominance in various contexts. This again serves to normalize men’s violence as a means to settle conflict and as a standard in any romantic relations. Interestingly, a connection between the American and Moroccan male may provoke conversation beyond the intimate relationship between a man and a woman. Male artists particularly within this genre convey a confused vindication of their interactions with and actions against women. What ought their intimacy with a female look like and how ought they reconcile their own pride and integrity in a shared space? Must they adapt or must they assert a domineering influence in the public and private spaces? As Mernissi suggests, there is a fear against pluralism and it is more comfortable to maintain a homogenous appearance, and perhaps that fear prioritizes gender over other human differences, even race. And focus here on these artists, largely consisting of racial minorities, raises questions of socio-legal parallels. They lyricize about gang violence and those associated pains, but fall short of linking this societal mentality of induced pain and suffering with forcing these provocative and humiliating sentiments onto their female

<sup>27</sup> Brink, Susan. “Moroccan TV Tutorial: How to Cover Up Bruises from Domestic Abuse.” *NPR*, NPR, 3 Dec. 2016, [www.npr.org/sections/goatsandsoda/2016/12/03/504120214/moroccan-tv-tutorial-how-to-cover-up-bruises-from-domestic-abuse](http://www.npr.org/sections/goatsandsoda/2016/12/03/504120214/moroccan-tv-tutorial-how-to-cover-up-bruises-from-domestic-abuse).



counterparts – female counterparts that fall victim ceaselessly to the learned masculine reactionary and violent tendencies used to cope with the very real inequities in society.

Some of the most popular music of the recent decades derive from a seemingly impenetrable cycle of poverty that reinforces violence as a mode of survival, further revealing concentric circles of implications in the home. In widening the scope, it is also useful to recognize that laws notably fail both genders here, or particularly the ways in which the interpreted law is utilized to undermine equality and justice. Cloaked in language suggestive of a rather raw mentality towards society and women, it would seem famous rapper 21 Savage expresses a vulnerable plea for change:

Gang vs. the world, me and my dawg, it was us / Then you went and wrote a statement, and that really fucked me up / My brother lost his life and it turned me to a beast / My brother got life and it turned me to the streets (...) How many problems you got? (A lot) / How many lawyers you got? (A lot) / How many times you got shot? (A lot) / How many n\*\*\*\*\* you shot? (A lot) / How many times you cheat? (A lot) / How many chances she done gave you? F\*\*\* around with these thots (A lot)<sup>28</sup>

And yet, such vulgar, humiliating language stretches across every race, ethnicity, and color of skin. Rapper, Eminem, is a white man whose songs *Love Game* and *So Much Better* explicitly give a misogynistic spotlight on the free access to the female body, while unapologetically promoting a male disrespect and violence against women:

Snatch the b\*tch out her car through the window, she screamin' / I body slam her onto the cement, until the concrete gave and created a sinkhole / Bury this stink h\*e in it, then paid to have the street re-paved<sup>29</sup>

<sup>28</sup> 21 Savage. Lyrics to “A Lot.” *Genius*, 2018, <https://genius.com/21-savage-a-lot-lyrics>.

<sup>29</sup> Eminem. Lyrics to “Love Game.” *Genius*, 2013, <https://genius.com/Eminem-love-game-lyrics>.

This language coalesced with his lyrics in *So Much Better* (2013), “I got 99 problems and a b\*tch ain’t one / She’s all 99 of ‘em; I need a machine gun,”<sup>30</sup> reveal distressing results. It is alarming that a man of his success has garnered such a following utilizing a dark sense of assumed male control over the anonymous female body, yet masked or justified, rather, by story-telling of his difficult childhood and hurt community. Further, his use of “machine gun” and “body slam her” leaves little to the imagination; it is a direct promotion and normalization of dominating through gruesome methods of violence, and particularly violence against women, and it severely reduces women to silence and submission with no capabilities of fighting back. The perpetuated spread of lyrical music, cinema and TV content that glorifies and sexualizes the degradation and violence against women by men instills a toleration of power and control over women in society.

It is within this context of understanding the cultural norms around violence that scholar Rachel Snyder investigates in her book *No Visible Bruises* (2018) how abusers are created and why they stay in relationships they have rationalized as having induced their violence. In analyzing how families, communities and society inclusively foster the violent characterizations of men as that which makes one a “man,” – the dominant, unemotional, confrontational, and successful species – we may find the specific ways in which to wholly mitigate the creation of a violent partner. In illuminating the ways in which society dooms men from birth, a rather humanizing narrative is created as a contrast to the jarring data of violence and interpersonal violence, thus making it at least a

<sup>30</sup> Eminem. Lyrics to “So Much Better.” *Genius*, 2013, <https://genius.com/Eminem-so-much-better-lyrics>.

little harder to simplify the men and women that make up the judicial, criminal justice and general social systems. One must challenge the idea that we know only what we identify, and so look to conjoin this intergenerational transmission of violence with domestic violence theory. Particularly, a blend between the social-psychological and the sociocultural models help to address the external factors, and the societal gender roles and cultural norms, respectively, that can account for men's violence within the culture of violence they have grown up in. Utilizing these models demonstrate that women get one type of training and men another. Girls are taught to affirm a submissive role meant to temper eruption both for themselves and for the opposite sex. It is rarer for masculine methods of reclaiming control to be used by women, but certainly not unheard of. Boys are indoctrinated with the toxic hegemonic masculinity complex which teaches that violence, be it IPV, "gang turf wars, street assaults, armed robbery...etc.,"<sup>31</sup> is needed to enforce the learned belief that they are superior.<sup>32</sup> If met with challenging this misogyny, criticism mocks the softer femininity they may be portraying in place of strength and power.

#### **CIRCLE 5: LARGER SOCIETY AND THE LEGAL SYSTEM**

The fifth circle represents the larger society like gender inequality, and laws and sanctions. A learned abuser learns he can get away with his violence when system actors or civil servants like judicial officers, public prosecutors and police officers excuse his actions or discredit the woman's testimony of her experiences. In a submission by the

<sup>31</sup> SNYDER, RACHEL LOUISE. *NO VISIBLE BRUISES: What We Don't Know about Domestic Violence Can Kill Us*. BLOOMSBURY, 2020.

<sup>32</sup> Ibid., 113

Maryland Bar Association regarding “spousal defense,” they found that the law still has traces of antiquated notions of spousal rape. Such notions established that women belonged to or existed under the single legal identity of their husbands – that the husband and wife are one person in law and that the woman’s very being is suspended during the marriage. Rooted in this, Maryland’s “spousal defense” beliefs are that a person may not be prosecuted under rape in the “first, second, or sexual offense in the third or fourth degree of this subtitle for a crime against a victim who was the person’s legal spouse at the time of the alleged rape.”<sup>33</sup> A spousal rapist can only be prosecuted if (1) at the time of the alleged crime the person and the person’s legal spouse have lived apart and had a written separation agreement or lived apart for at least three months immediately before the alleged rape, and (2) the person used force or threat, and the act was nonconsensual. This antiquated view of marriage, in which women are presumed to be consenting always after she says, ‘I do,’ reveals society’s view that spousal rape is somehow a “less important crime than a stranger or acquaintance rape.”<sup>34</sup> Such relaxed criminalization of this conduct teaches an abuser that he may repeat his violence as a form of control in his adult relationships, and that in a marriage, the most coveted of relationships, the idea of ownership is still supported by the law. He will be excused and protected.

In Morocco, the aforementioned national survey done by the Moroccan High Commission for Planning found that in most cases officers refused to record the women’s

<sup>33</sup> Barnes, Jeff. “Maryland’s ‘Archaic’ Sex Laws May Soon Come off the Books.” *Delmarva Daily Times*, Salisbury Daily Times, 24 Jan. 2020, <https://www.delmarvanow.com/story/news/local/maryland/2020/01/24/marylands-archaic-sex-laws-may-soon-come-off-books/4555502002/>.

<sup>34</sup> Hausner, Deena, and Christina Kennedy. “My Husband Rapes #MeToo: The Persistence of the Marital Rape Exemption.” *Maryland Bar Association*, 2019.

statements. They also chose not to investigate and refused to arrest the abusive suspects even after public prosecutors ordered them to – in many cases, the prosecutors often did not file the charges in the first place. In some cases, the police officers told the women to return to their abusers if they had no witness. Prosecutors who do take on the cases are met with unrealistic expectations for evidence as required by judges, including most often the impossible task of finding witnesses, other than their children. The idea that this abuse happens behind closed doors is still delegitimized. That system actors here fail women at every turn invariably supports the cultural norms surrounding IPV. As according to a 2003 United Nations Development Fund for Women report, such norms place women under an inferior status in which they are “undervalued, disrespected and prone to violence by their counterparts.”<sup>35</sup> Here the idea of women as property clearly persists. While Morocco has changed its laws to raise the minimum age of marriage from fifteen to eighteen, and outlawed the legal obligation for a wife to obey her husband, the cultural norms are apparent in the beliefs held by their civil servants. Morocco has yet to provide legislation that specifies the duties of police, prosecutors, judges and other authorities in these cases, creating a cushy system of protection for abusers whose only lessons learned are that violence as a means to solve conflict or maintain control is permissible.

In analyzing the risk factors of creating and sustaining a learned abuser, the *Integrated, Ecological Model* is a helpful tool to show how regressive the two relevant

<sup>35</sup> Kimani, Mary. “Taking on Violence against Women in Africa | Africa Renewal.” *United Nations*, United Nations, July 2007, <https://www.un.org/africarenewal/magazine/july-2007/taking-violence-against-women-africa>.

cultures and legal systems are toward IPV. However, this toxic cultural realm of tolerance begs the question then: What if what we know to be true of society – that of, abusers as learned and not innate – can undergo a critical self-reflection and revision in such a way that deconstructs the patriarchal social norms that seem to carry significant weight and resultant patterns in domestic violence cases? If so, it would seem that this idea – that the laws and the application thereof by system actors – would become rather inexcusable in hindsight.

## CHAPTER FIVE

### HOW THE LAW TOLERATES INTIMATE PARTNER VIOLENCE: A UNITED STATES CASE STUDY

A young woman named Monica<sup>1</sup> and her husband obtained their visas after leaving behind their struggling lives in Colombia for settlement in Massachusetts. They got by with temporary jobs, and shared their first child, Javier. Optimistic to continue her pursuit of a law school education, Monica attended classes while raising their first son. After her first marriage dissolved, Monica met Antonio. Not too long after did the couple fall in love and get married. However, Monica had to stop pursuing her passion of the law. She looked to government agencies to help in her job search as she did not want to become financially dependent on Antonio. But, when she birthed her second child, Antonio Jr., and their first together, she fell into a diagnosis of deep postpartum depression, threatening to take her own life in one instance. The abuse had started some time before the birth of Antonio Jr., who was later diagnosed with psychiatric disorders such as attention-deficit hyperactivity disorder (ADHD), posttraumatic stress disorder (PTSD), and attention-deficit disorder (ADD). Their third child, Carmen, was born, challenged with similar disorders from a young age, in which she did not start speaking until a few years after the prescribed age range and remained noticeably mute until her

<sup>1</sup> All names have been changed and certain details altered to protect the anonymity of the client and her family.

father received a court-ordered restraining order and was out of the house. She had endured physical abuse and sexual abuse by her father.

Antonio's step-son, Javier, was resented to the point of graphic death threats. But, if Monica dared to stand up for her children, she could expect to be beaten up and raped soon after. He refused to join for his children's medical appointments, and maintained strict possession over the car, forcing Monica and her children to take public transportation. He was an alcoholic who slacked off at work, so bringing in minimal money to his family whose rationing of food became unbearable. She threatened legal action and divorce if he did not change, and he threatened her with deportation and separation from her children.

After years of trying to get the Department of Children and Families (DCF) to get her and her children out of their violent, tormenting situation, she finally reached out to a pro-bono lawyer duo. DCF had failed to bring a translator to meetings, asked about the abuse in front of her husband, and lacked the urgency needed in her situation. The lawyer duo received a reluctant court-ordered restraining order against Antonio for a year. A year was up when a dispute between the District Court and Family Court arose, in which both rejected the case claiming it was the other's jurisdiction. An older male judge listened to a woman's case before Monica's. The teenage Caucasian girl spoke timidly and without detail about the abuse she endured by her ex-boyfriend, who was ordered to be handcuffed and reallocated to the other side of the room. He was Latino. The judge granted her an extension on her restraining order. Hope for Monica's case was encouraged. However, when she took the stand, her husband stood one foot away from



her. Instead of reading the detailed and graphic affidavit before him, the judge demanded Monica be explicit in front of the public courtroom about how she was abused by the man before her. Antonio remained calm as Monica began to hyperventilate and cry. Even the judge commented that from what he could tell, her abuser seemed like a fine and collected man, and that she was failing to provide any details to say otherwise.<sup>2</sup> It was true, she would have quite the wind-up to the actual abuse in the story and then fail to utter the actual sequence of events so essential to obtaining the restraining order extension. But, it was written in the affidavit. Did he know that recalling traumatic events and doing so in front of an abuser has severe psychological and physiological impediments?

Monica's bodily reaction to being in the same vicinity as Antonio at the court house was scary. Her skin went pale and into sweats. She was shaking so profusely, she almost passed out. She feared for her and her children's lives. She had to wait until he was out of sight for the lawyers to walk her home. Just the next day, the lawyers received a call – he had run into her and her children, threatening to take Carmen with him. He had no restraining order against him anymore, he could say whatever he pleased to torture Monica. What could they do? What could she do?

This story emphasizes multiple patterns of factors working against women in the legal system, and the disproportionate responses towards minorities or marginalized communities that will be addressed in later sections.

<sup>2</sup> This is a paraphrase of what the judge had said. The intention here is to keep the client and the client's experience anonymous.

## THE DEFINITIVE STRUGGLE IN LEGAL LITERATURE AND PRAXIS: THE “MALE JURISPRUDENTIALITY” 1970-1990s

It was not until the end of the twentieth century that the concept of men’s violence against women was raised as an issue to be addressed in legal literature and praxis. The 1970s witnessed the second-wave feminist movement that struggled against the masculine legal framework. The 1980s brought to a head a new kind of legal feminism, coined *dominance feminism* as the “ascendant feminist legal theory” seeking to transform the legal claim for sexual harassment and the systematic tolerance or neutrality towards domestic violence. By the 1990s, activists reached the federal level to establish priority in the legal response to violence against women. A history here combined with the understanding of the American nature of the nation-state demonstrates the tangible benefits and repercussions of shifting the language of domestic violence as something cultural or classist towards a non-discriminatory criminalization thereof across the board.

At the start of 1970, Leigh Goodmark states in her book *A Troubled Marriage: Domestic Violence and the Legal System*, that if your husband hurt you, you had little recourse. Police likely would tell you to tell your husband to take a walk around the block to calm down rather than consider arrest. If he were arrested, he likely was not prosecuted, but if he was, his assault would be based on a “violation of the general criminal laws of assault and battery rather than for the specific crime of assaulting or battering a spouse.”<sup>3</sup> If he were to be somehow convicted, there was little chance he would actually spend a day in jail. Going through the civil justice system generated

<sup>3</sup> Goodmark, Leigh. *A Troubled Marriage: Domestic Violence and the Legal System*. NYU Press, 2012. JSTOR, [www.jstor.org/stable/j.ctt16gzq7n](http://www.jstor.org/stable/j.ctt16gzq7n). Accessed 28 Mar. 2020., p. 8.

similar outcomes. Even if you lived in a state that permitted divorce on the grounds of cruelty of treatment and requested a restraining order, it was largely unenforced. Police and prosecutors were unlikely to give civil relief, and there was virtually no legal remedy for if your partner threatened, degraded, or forced you to conform to his rules.

Furthermore, a woman could not obtain a restraining order against their violent partner unless she was “willing to file for divorce at the same time,”<sup>4</sup> and prior to these legal reforms, enforcement of restraining orders was rather pathetic. The process to obtain one was arduous and even when put into effect, judiciaries upheld weak penalties for violations, making the deterrent but a minor obstacle and presumably their anger towards their spouses’ attempts all the more heightened. Such uncertainty in the legal system gave way to fewer arrests, prosecutions, and sentencings. This was simply the dynamic between men and women. By the end of the 1970s, second-wave feminism came in full force demanding more effective and united legal response. In a joint effort between these feminists in the apex of the second-wave feminism, victim advocates – many of whom were one-in-the-same –, and conservative politicians “interested in expanding the use of law to enforce ‘public morality,’”<sup>5</sup> a series of criminal justice reforms framed around interpersonal violence were pursued. However, the call for equality was frustrated and gave rise to more radical feminist theories advocating for re-norming of masculine and feminine roles.

<sup>4</sup> Ibid

<sup>5</sup> Idem

At the start the 1980s, Catharine MacKinnon wrote in her 1982 article, “Feminism, Marxism, Method, and the State: An Agenda for Theory,” about the new dominance feminism. It claimed that the “legal system’s central concern should be remedying women’s subjugation, a subjugation created and reinforced by women’s sexual subordination to men.”<sup>6</sup> Sexuality expressed as “pervasive powerlessness to men”<sup>7</sup> is the primary social sphere of male dominance and it must be reclaimed. Subjugation does not define a woman and the “eroticization of the dominance and submission”<sup>8</sup> must be dismissed for it promotes sexual violence, prostitution, pornography and domestic violence. It reinforces the theory proposed by Immanuel Kant that men are subjects and women are objects, and permeates into legal literature what MacKinnon coins as the state as “male jurisprudentially”. This term signifies that “the law sees and treats women the way men see and treat women”.<sup>9</sup>

As such, legal institutions funneled the issue to one only between married couples, and while police officers were trained to identify abusers in seemingly extraneous situations, – something of which gives excuse to maltreatment, like drunkenness – they were not trained to arrest them. Law enforcement would continue to plague the cycle of abuse, not in the least that it is not uncommon responding officers share their own history of spousal abuse. Thus, there exists a consistent undermining of the severity of the abuse in “domestic disputes,” in which leniency is given to those violent husbands they may identify with and see no real need to act. Prior to and into the

<sup>6</sup> Ibid., 10

<sup>7</sup> Idem

<sup>8</sup> Ibid., 11

<sup>9</sup> Idem

1980s, the National Institute of Justice shows that many police departments had “hands off” policies, and police training manuals “specified that arrest was to be avoided whenever possible in responding to domestic disputes.”<sup>10</sup> Victims of abuse were thereby trapped in a rather impenetrable cycle of social failure to help.

By 1980, forty-seven states passed legislation mandating change in domestic violence protection Orders, thus allowing “warrantless arrest for misdemeanor assaults, and recognizing a history of abuse and threat as part of a legal defense for battered women who killed their abusive husbands.”<sup>11</sup> However, there are many failures in this application and incarcerated women for murders against their intimate partners in self-defense will be addressed in later chapters. Nevertheless, women now had legal recourse in the civil justice system against law enforcement that failed to respond appropriately to calls for help and could lean on the law in cases of IPV between non-marital partners. With attention to the abusive antagonist, the 1980s introduced a restorative form of justice once occupied by weak retributive justice through bringing treatment programs into probation departments for abusive husbands. And by 1989, advocates had created the civil protection order using the injunctive relief available to civil courts in every state. However, problems persisted in getting the legal system to respond appropriately to abused women and the interpretations of legal discourse has evidently been stretched to non-effect as in the case of Maryland and their archaic views on spousal defense.

<sup>10</sup> Fagan, Jeffrey. *The Criminalization of Domestic Violence: Promises and Limits*. National Institute of Justice, 1996, p. 8, *The Criminalization of Domestic Violence: Promises and Limits*.

<sup>11</sup> *Ibid.*, 9

But as the National Institute of Justice reports, over those thirty years, legal reforms did develop and developed along three parallel policy tracks: (1) criminal punishment and deterrence of batterers, (2) batterer treatment, and (3) restraining orders in the civil court designed to protect victims through the threat of civil or criminal legal sanctions. Thus, by 1990 many States had developed strong legislation that corrected historical wrongs and won federal funding for police, prosecutors and civil legal assistance through the establishment of *Violence Against Women Act* (VAWA) in 1994. VAWA determined for the first time in American legal history that domestic violence is a national crime and “cemented the position of the legal system as the primary responder to domestic violence in the United States”<sup>12</sup> and primary servant to end the violent subordination of women. Through its grant programs, like STOP (Services for Training Officers and Prosecutors), federal money was transmitted into the civil justice system to ideally stand by women at every step; it funded a network of civil attorneys and provided assistance in immigration, administrative, housing and protection order matters. In other words, VAWA was a way to reorient the balance of power between men and women by leveraging state power on the side of the woman. However, going into today’s world, the rate at which women are killed by their intimate partners has not declined and the majority of the federal funds actually go towards the criminal justice system. The criminal justice system was supposed to be just one of many strategies but the disproportionate funding has therefore taken away from other essential services for helping women get out of their abusive households like housing, job training, education

<sup>12</sup> Goodmark, Leigh. *A Troubled Marriage: Domestic Violence and the Legal System*. (18)

or economic development. As law professor G. Kristian Miccio argues, “by focusing solely on the criminal justice system and criminal sanctions, other aspects of communal life that contribute to the perpetuation of the male intimate violence remain unexamined and unaccountable.”<sup>13</sup>

## THE LAW TODAY

Today, while the United States Constitution grants specific powers to the federal government, it is the duty of each state – with its own constitution, governmental structure, legislation and judiciary – to administer rulings based on their individual legislation and policies. Federal law can help “an overburdened state and local criminal justice system,”<sup>14</sup> but in the majority of cases of domestic violence, state and local authorities are the registered lawgivers. As is the paradigm of many other criminal or civil cases, such circumstances subject the parties involved to varying degrees of treatment and judgments – both in the court room and in daily societal interactions. Should the most appropriate course of action be to apply the federal laws, the parties involved will be subjected to VAWA and its provisions, and the *Gun Control Act* (1996). In addition to VAWA, the *Gun Control Act* recognized the danger of a firearm in situations of domestic violence, consequently making it a federal crime to possess one while a protection Order is in place against the abuser or if the abuser has been convicted of a proportionate misdemeanor crime of violence.<sup>15</sup> Though, while VAWA is an excellent advancement, it is funded so “sparingly, it is practically a hiccup in the federal

<sup>13</sup> Ibid

<sup>14</sup> “Federal Domestic Violence Laws.” *The United States Department of Justice*, 6 Dec. 2017, [www.justice.gov/usao-wdtn/victim-witness-program/federal-domestic-violence-laws](http://www.justice.gov/usao-wdtn/victim-witness-program/federal-domestic-violence-laws).

<sup>15</sup> Ibid

budget.”<sup>16</sup> For comparison, the annual budget for the Department of Justice, which oversees VAWA, is \$28 billion, and yet VAWA receives just \$489 million despite the substantial financial burdens IPV takes on tax payers and victims alike.

Continuous and impressive work has been made to revise the family legal system, but in consideration of the numerous actors and systematic ranks involved, convolutions and concessions tend to undermine legislation for better or for worse – such is the reality of the anecdotal “social organization of courts and local legal cultures”<sup>17</sup> that tend to influence their domestic violence decisions based social experience and understanding. Lawmakers and lawgivers have yet to assimilate theories of general male violence with theories of interpersonal violence, making legal sanctions on abusers “limited” and their implementation “constrained by practical operational contingencies.”<sup>18</sup> Also, and as is the nature and perhaps pitfall of democracy in this case, legislation changes with each administration and whichever kind of political rhetoric, beliefs and policy opinions that accompany.

According to the Department of Justice’s Office on Violence Against Women under the Barack Obama administration (2008 - 2016), all the forms of abuse at play in Monica’s case would have been at least recognized. Their definition was:

A pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner...It can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate,

<sup>16</sup> SNYDER, RACHEL LOUISE. *NO VISIBLE BRUISES: What We Don’t Know about Domestic Violence Can Kill Us*. BLOOMSBURY, 2020. (11)

<sup>17</sup> Fagan, Jeffrey. *The Criminalization of Domestic Violence: Promises and Limits*. (1-2)

<sup>18</sup> Ibid



manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.<sup>19</sup>

This definition of IPV was comprehensive and effective at least at the executive and legislative levels because it was created in coalition with experts including the National Center for Victims of Crime, the National Domestic Violence Hotline, and WomensLaw.org. It recognized IPV as a pattern of deliberate behavior, incorporated the models of power and control, and the extensive means of which abuse occurs. It additionally underscores the vulnerability of children to become the next generation of abusers, taught that violence is a normal way of life. In this definition, abuse is not only a crime to be heard in criminal courts but also a civil action to be heard in civil courts.

However, under the Donald Trump administration (2016 - present), the definition was restricted in 2019 sourcing no external expert non-governmental agency. It is now limited to:

The term includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.<sup>20</sup>

In line with the current administration's push to decentralize the government and give more power to individual state laws, this definition seeks to destabilize the power of a federal definition to be applied equally to all abusers and victims. Additionally, this

<sup>19</sup> "Domestic Violence." *Domestic Violence | OVW | Department of Justice*, 2015, [web.archive.org/web/20180409111243/https://www.justice.gov/ovw/domestic-violence](https://www.justice.gov/ovw/domestic-violence).

<sup>20</sup> "Domestic Violence." *The United States Department of Justice*, 16 May 2019, [www.justice.gov/ovw/domestic-violence](https://www.justice.gov/ovw/domestic-violence).

definition restricts the courts in which interpersonal violence cases can be heard. By labeling domestic violence as only damages that comprise a “felony or misdemeanor crime,” abusive means like stalking and harassment do not meet the updated standards. It fully ignores the nonphysical ways in which violence can be administered, which minimizes a Centers for Disease Control and Prevention report demonstrating that over a third of U.S. women experience “psychological aggression” by an intimate or former intimate partner – that is, 43.5 million women a year.<sup>21</sup> Effectively, the new definition denies the “experiences of victims of abuse by attempting to cast domestic violence as an exclusively criminal concern.”<sup>22</sup>

With application to Monica’s case, this definition severely constrains those from minority or marginalized communities to report to law enforcement and it would also seem to give liberty to the judicial systems in how they define domestic violence as a crime in their courts or whether police are held responsible for their part in these cases. In creating a definition that gives power to individual judges to decide, it leaves space for biased interpretations. Therefore, “race, class, sexual orientation, and immigration status”<sup>23</sup> has and will significantly affect whether a survivor decides to seek legal recourse or external intervention methods to end the violence at home. As the two consecutive administrations demonstrate, and as Professor Breger notes, “how a legal

<sup>21</sup> Nanasi, Natalie. “The Trump Administration Quietly Changed the Definition of Domestic Violence and We Have No Idea What For.” *Slate Magazine*, Slate, 21 Jan. 2019, [slate.com/news-and-politics/2019/01/trump-domestic-violence-definition-change.html](https://slate.com/news-and-politics/2019/01/trump-domestic-violence-definition-change.html).

<sup>22</sup> Ibid

<sup>23</sup> Idem

system operates often reveals the roots of a societal culture.”<sup>24</sup> That the current definition gives such liberty especially to law enforcement and the judicial system gives purpose to understanding how to reform the patriarchal nature of the nation-state and why its created framework is applicable today.

Perhaps a positive comes out of Trump’s support of decentralization when federal regulation is not a present option. On the state level, the state of New York is notable, but unfortunately it is the only one to really elevate. New York’s legislature created the Office for the Prevention of Domestic Violence (OPDV) in 1992, which is both proudly and sadly the first and only “free-standing agency in the nation dedicated to domestic violence.”<sup>25</sup> In operating as a think-tank to promote comprehensive and tactful domestic violence legislation, it helped to pass the Family Protection and Domestic Violence Intervention Act in 1994 which gives survivors the agency to choose between Family Court and Criminal Court or appear in both, in order to get dual court orders of protection from their abusers. The work of the OPDV has proven a deeper understanding of the extent of abuse, educating the New York court systems not only on the physical and psychological tactics used, but also emphasizing the abusive means of economic control in which abusers take steps to widen their victim’s financial dependency. Other states have taken steps towards affecting law to modify the sever extent of abusive means used to maintain power and control in an intimate relationship. New York is the only state with a freestanding agency committed to minimizing domestic violence through educating

<sup>24</sup> Breger, Melissa L. “Reforming by Re-Norming: How the Legal System has the Potential to Change a Toxic Culture of Domestic Violence.” (172)

<sup>25</sup> Ibid., 193

lawmakers and assisting them to “[create and implement] future appropriate and fitting laws.”<sup>26</sup> Other states are getting there, but it remains to be seen.

## **WOMEN WHO KILL THEIR ABUSERS: THE LEGAL REPRECUSIONS**

It is also important to recognize the disproportionate incarceration of women who, in imminent fear of their or their children’s lives, have responded to domestic violence in such self-defense that the abuser is killed. A recent report on female homicide from the State Department of Corrections and Community Supervision found that 67 percent of women sent to prison in 2005 for killing someone close to them, other than their children, were abused by their torturer whom they killed.<sup>27</sup> With this in mind, a reference back to how the nature of the nation-state definitively created masculine and feminine methods of societal roles creates an interesting analysis of cases in which the woman takes on the masculine method of violence and how such action is handled by the law and in the courtroom.

According to *Penal Reform International*, the United States criminal justice system as regards the relevance of a history of abuse in establishing culpability finds that it is not a defense in its own right, but may be considered as part of a larger argument proving the defendant’s actions were in reasonable self-defense.<sup>28</sup> As of current, there is no legislative provision to allow such partial or full defense, but evidence of “battered

<sup>26</sup> Idem

<sup>27</sup> Snyder, Rachel Louise, et al. “When Can a Woman Who Kills Her Abuser Claim Self-Defense?” *The New Yorker*, 20 Dec. 2019, [www.newyorker.com/news/dispatch/when-can-a-woman-who-kills-her-abuser-claim-self-defense](http://www.newyorker.com/news/dispatch/when-can-a-woman-who-kills-her-abuser-claim-self-defense).

<sup>28</sup> *Women Who Kill in Response to Domestic Violence: How Do Criminal Justice Systems Respond?* Penal Reform International, 2015, p. 5., *Women Who Kill in Response to Domestic Violence: How Do Criminal Justice Systems Respond?*

woman syndrome” by expert testimony can, in some states, be taken into account.<sup>29</sup> Further, at the time of the PRI study, they had not identified a national law that explicitly mentioned prior domestic or sexual violence as a “mitigating factor relevant to guilt or innocence in case of a violent offense against an abuser,”<sup>30</sup> though some state laws exist today. The defendant may give evidence of prior violence, but not on the aforementioned grounds. In multiple cases, yet very much subject to individual jurisdictions, and is far from the norm, such evidence of past abuse has led to lesser sentences delivered. Sentencing guidelines in the United States mandate that the trial judge considers certain aggravating or mitigating factors, while maintaining some discretion as to what evidence can be offered. As will be discussed, judicial discretion has a variety of effects.

## **HER STORY**

In a separate article<sup>31</sup> published by Rachel Snyder, she reviewed the trial transcripts and interviews for a murder case in which a woman claimed self-defense when she killed her abuser in Poughkeepsie, New York. In this case, a new law that allows for more lenient sentencing guidelines for crimes committed by victims of domestic violence was tested, called the Domestic Violence Survivor’s Justice Act (DVSJA) signed by New York Governor Andrew Cuomo in May. Nicole Addimando met Christopher Grover in 2008 when she was nineteen and he was twenty-one, both working as gymnastic coaches at the same club. They never married. She was described as shy and introverted and he was described as charming, childlike, playful and

<sup>29</sup> Ibid., 74

<sup>30</sup> Ibid., 13

<sup>31</sup> Snyder, Rachel Louise, et al. “When Can a Woman Who Kills Her Abuser Claim Self-Defense?”

sometimes short-tempered. When they began dating, Addimando confided in Grover that she had been sexually assaulted by a neighbor at just five years old and so requested they take things slow. They began to have sex after a year but when she would ask him to stop, he would not, claiming he had needs too. In 2011, she began working at a nursery school and with all the children around, she wanted her own soon, getting pregnant just a year later. At that point, they moved to Hyde Park in New York because money was tight.

Every once in a while, Addimando would see a licensed clinical social worker for counselling sessions in which she slowly confided in her about her child abuse, but after giving birth to their first child, she stopped going to the sessions. She had also quit her nursery job. One day in 2013, when their first child, Ben, was just six weeks old, Grover made a sexual advance on Addimando but when she declined, he slammed her face into the door frame of Ben's room and forced himself on her. Addimando testified that during this time, he seemed to have developed a proclivity for forced sex – a pattern he would soon advance on. She wondered if she was doing something wrong to bring on the abuse or if she was obligated to allow him the kind of sex he wanted, perhaps subconsciously reaching back to the outdated expectations of a woman's freedom absorbed in marriage to her husband. Her consent was considered continuous.

Grover began to film the sexual assaults without her knowledge, but she was too scared to confront him. While pregnant with their second child, Faye, in 2014, Grover advanced on her again and she declined. This time, he bit her on the shoulder and slammed her face onto the counter twice then sexually assaulted her. She contacted the

victim-assistance program at Family Services to get a forensic-nurse exam. She was barely audible and spoke in whispers because her jaw had been so smashed in. Despite her injuries, she refused to file a police report because she was scared to lose Ben in the process. Two days after the exam, he again assaulted her by forcing her to the floor, put a metal spoon into a gas flame on the stove and burned her breasts, thighs and genitalia for having given him a sarcastic comment. She got another exam done and was described as “nervous, whispering, poor eye contact, and shaking.”<sup>32</sup> Again, she did not report.

Around the time Faye was born in 2015, Grover became obsessed with pornography. Addimando testified that he “began to construct homemade sex toys out of PVC piping, cement glue and athletic tape and would insert them in her vagina and anus.”<sup>33</sup> He would tie her up, use a rubber ball as a gag, assault her vaginally with a gun, and strangled her with a bathrobe belt almost to unconsciousness. Her visible bruises and black eyes led her Family Services counselor to administer a domestic violence risk assessment, placing Addimando in the highest-risk category for homicide. The risk factors included: sexual assault, abuse while pregnant, gun ownership and strangulation. Those videos he filmed of his assaults were found on PornHub without her consent, leading Family Services to prepare an affidavit attesting to the abuse she described. Addimando refused to sign it for fear of retaliatory violence and losing custody of her children. She was worried he would claim her injuries were self-inflicted, although when

<sup>32</sup> Ibid

<sup>33</sup> Idem

a midwife tried to complete a pelvic exam, she could not because of extreme swelling around her vaginal and anal areas.

In 2017, a tip from a mother at Grover's gymnastics club prompted Child Protection Services to call their apartment, and then visited the next morning for separate interviews. The mother had heard about Addimando's injuries and witnessed Grover lose his temper in front of his students. The sudden involvement of CPS scared Addimando and angered Grover, demanding she call anyone and everyone to explain there was no cause for concern.

At 2:00 AM the next morning, Addimando was found in a car by a police officer stuck at a green light with her two children in the back, with only socks on her feet. She told the officer she had tried to leave, but he said he would kill her, and explained that his body was still in the apartment lying on the couch dead. In 2018, she plead not guilty of charges of second-degree murder, first- and second-degree manslaughter, and second-degree criminal possession of a weapon. For her as the defendant to prove that she acted in self-defense, she had to demonstrate that "she believed, with cause, that a threat to her life or significant bodily harm was imminent."<sup>34</sup> She testified that in the precise event of his death, he had threatened to kill her and himself just before she shot him in self-defense. She kneed him the groin, struck his arm and Grover dropped the gun onto the floor at which point she grabbed for it. He told her she would never pull the trigger and threatened to kill her once more, after which she lunged toward him and killed him.

<sup>34</sup> Idem



## THE TRIAL PROCEEDINGS: THE PROSECUTION AND DEFENSE

The prosecutor for the state remarked that whether Addimando had suffered abuse from Grover was immaterial if the defense could not prove she was being physically abused at the precise moment when she killed him, claiming she killed him in his sleep. Though it does not seem he was physically abusing her at the precise moment, it is difficult to say precisely when the imminent fear of death will manifest itself. There is a distinction to be drawn between a sudden attack by a random stranger as opposed to someone “you [have] studied for a long time, whose tendencies you know very well. You can easily believe the threat is imminent, because you know what is coming based on your past experience,”<sup>35</sup> as emphasized by Leigh Goodmark in Snyder’s article.

Though the prosecutor claimed Addimando had been self-injuring, forensic studies show that the wounds she sustained did not follow any understandable pattern and some of them were in places she could not reach, like the bite marks on her shoulder. The prosecutor also claimed that she was confusing abuse she received from a previous acquaintance with Grover, but psychological studies show that with such a history of head trauma and strangulation, memory lapses are common in victims of sexual assault and abuse, making the navigation of her own experiences confusing when questioned. Unfortunately, she had never been evaluated for traumatic brain injury. A state defense expert also explained that Grover just did not seem like a likely abuser. He did not show publicly any morbid jealousy tendencies.

<sup>35</sup> Idem

He also stated that her text message history with him seemed to show abuse, rather, on her end. She would call him “stupid” and the like, revealing the feminine methods of violence women are taught to use as opposed to physical violence in most cases. She used her words in combat, finding it to be the only source to standing up for herself or acting out against him. She was asked why she would dare send him combative messages if he was so abusive to her. She reasoned, “I fought back with my words. I was asking for it, I guess, because he punished me for it.”<sup>36</sup> In this prosecution, the abuse she endured was acknowledged but minimized and detached from the crime at hand, and the textual abuse she dealt in the past was emphasized as evidential motivation for killing her abuser.

Why did she not just leave? This question was repeated multiple times during the trial process and is perhaps one of the most frustrating questions to ask victims of abuse. The fear of vengeful violence, losing custody, deportation, financial loss, and the love and hope a victim may still have for their abuser is among some of the many reasons why a victim does not leave or fails to leave successfully. Furthermore, the process of leaving an abuser is among the most dangerous times for a victim, unfortunately leading to homicide often times. As Kit Kinports, a professor at Penn State Law School, writes that in order to determine an act of violence as an act of self-defense, “the legal system must start to take into account the ‘social realities that victims face – a lack of alternatives and how dangerous it is to leave.’”<sup>37</sup>

<sup>36</sup> *Idem*

<sup>37</sup> *Idem*

It comes as no surprise that after three days of deliberation, a jury which was composed of eight women and four men found Addimando guilty of second-degree murder and second-degree criminal possession of a handgun, the most severe charges she could have been convicted of. She has now been sentenced to nineteen years to life in prison. In her courtroom remarks this year, she spoke to Grover's mother explaining that women abused "so often end up dead or where I am standing – alive, but still not free."<sup>38</sup> Juries rarely conclude that killing an abusive partner can be "a reasonable response to an unreasonable situation" according to Sue Osthoff, the co-founder and director of the National Clearinghouse for the Defense of Battered Women. Juries are asked by the prosecution to consider the immediate crime, whether she was acting in immediate self-defense during the murder or not. They are cautioned against considering evidence of long-term abuse, underscoring that jurors are not supposed to make a determination about abuse here.

By Addimando's supporters, it was hoped that her case may be considered with perhaps a little more sympathy under the DVSJA, which amends the penal law and criminal procedure law for sentencing and resentencing in cases like hers.<sup>39</sup> Where more discretion here seeks to empower judges to make decisions based on a long-range of factors, something similar to what one might positively interpret in the Trump administration's new definition of domestic violence, Judge Edward McLoughlin instead

<sup>38</sup> Wilson, Geoffrey. "Addimando Sentenced to 19 Years to Life in Murder of Boyfriend Grover in Poughkeepsie." *The Poughkeepsie Journal*, Poughkeepsie Journal, 11 Feb. 2020, [www.poughkeepsiejournal.com/story/news/crime/2020/02/11/nicole-addimando-sentenced-murder-christopher-grover-poughkeepsie/4694452002/](http://www.poughkeepsiejournal.com/story/news/crime/2020/02/11/nicole-addimando-sentenced-murder-christopher-grover-poughkeepsie/4694452002/).

<sup>39</sup> Ibid

declined the consideration of a lesser sentence that may have been between five to fifteen years. He determined that Addimando did not meet the New York Bar Association's requirements to be judged under the act, those of which include two forms of evidence establishing that they were a victim of domestic violence at the time of the offense: (1) that the abuse was a significant contributing factor to the crime, and (2) that the regular sentence for the crime would be unduly harsh.<sup>40</sup> It is hoped that from this law, such judicial discretion may give consideration to alternative imprisonment, like community-based alternatives to incarceration programs. Theoretically, it could inspire the judge to think more holistically of the crime and not just the bare-bone facts of the specific incident, allowing a fairness to override personal beliefs. He stated that she "had opportunities to leave Grover without utilizing lethal force," and that "no punishment would be more severe than explaining to your children someday what happened and why."<sup>41</sup> He continued to claim that she was a "broken person" for making the choices she has made. It would seem choice words such as these defeat the spirit of what Cuomo hoped to come from the enactment of this new law; killing your torturer is the same thing as a torturer killing you.<sup>42</sup>

Additionally, this case demonstrates what the new DVJSA fails to address, that of negotiated plea bargains in criminal cases. In hers, they could not reach a deal, but in many cases like hers, abuse victims opt for plea deals in order to receive lesser sentencing. This is often in spite of their own integrity, branding themselves a murderer

<sup>40</sup> Snyder, Rachel Louise, et al. "When Can a Woman Who Kills Her Abuser Claim Self-Defense?"

<sup>41</sup> Wilson, Geoffrey. "Addimando Sentenced to 19 Years to Life in Murder of Boyfriend Grover in Poughkeepsie."

<sup>42</sup> Snyder, Rachel Louise, et al. "When Can a Woman Who Kills Her Abuser Claim Self-Defense?"

despite the self-defense necessary to save their own lives. In one case, a woman pled down to first-degree manslaughter from second-degree to take a fifteen-year sentence over a potential life imprisonment. She was in this nightmare for having requested multiple restraining orders from her abuser, whom in a rage broke into her apartment and attacked her. In defense, she stabbed him once and it killed him.

## **CHAPTER SIX**

### **HOW THE LAW TOLERATES INTIMATE PARTNER VIOLENCE: A MOROCCAN CASE STUDY**

Human Rights Watch did a series of interviews in 2015 with Moroccan women who have endured some of the most tortuous forms of abuse by their husbands in order to demonstrate the real problem of men's violence against women in their country.<sup>1</sup> One of the women was a woman from Fez, Morocco and thirty-four at the time of the interview. She married her husband when she was seventeen and had two children with him, one aged fourteen and the other four years old at the time of the interview. After six years of marriage, her husband began to insult her daily and beat year at least once a month. He would throw books, phones, and glass at her, along with spitting in her food. In one instance, he punched her so hard she lost a tooth and in another, he burned her arm with a barbeque skewer and her leg with a cigarette. He would also rape her frequently and force her to do acts that she was uncomfortable with including forcing her to have anal sex with him.

In 2007, her husband tried to throw a glass filled with acid on her, but missed. He locked her in the house for fifteen days so she could not go to the police. Fatima had gone to the police twice in Fez, once in 2006 after the barbeque skewer attack and another in 2010. The first time, the police called her husband and he told them, "Look at this

<sup>1</sup> "Morocco: Tepid Response on Domestic Violence; Strengthen Laws, Provide Protection, Justice, Services."

woman. I saved her from prostitution. She said I burned her when she burned herself.”<sup>2</sup> The policeman told her, “shame on you,” to which she replied, “is there a woman who can burn herself?”<sup>3</sup> Because she had no eyewitnesses but her first child, they could not help her. The second time she went to the police was after her husband got drunk and demanded she take her clothes off in front of their nine-year-old son. When she refused, he stabbed her. She managed to run out of the house and her neighbor called a taxi to the police for her. When she got to the station, the officers seemed nervous to confront her husband and told her to go to her family. Her brother-in-law pressured her to return to her husband and null her complaint to a prosecutor. Neither the police nor the prosecutor checked in. She finally was able to leave her husband in 2015 and at the time of the interview, was applying for a divorce while living in a private shelter. She was scared because she had to leave her youngest son with her husband while the eldest was with her family. All she wanted was to be together with them.

Another woman interviewed was Jihan. She was eighteen at the time of the interview and her son was two. She got married when she was just fifteen or sixteen to a man who was at least ten years her senior and lived with him in a village in El Jadida province. The abuse began at the start of the marriage. On her wedding night, her husband forced to take off her clothes and dance for his friends. She would try to refuse and he would beat her. He would also rape her often, forcing her to have sex even if she refused. He would often beat her, once smashing her head on the kitchen sink and

<sup>2</sup> Ibid

<sup>3</sup> Idem

causing a gash that required stitches. When she went to the police, they said to her, “It’s your husband. We can’t do anything. Go to court.”<sup>4</sup> It did not matter to them that she had bruises all over her.

In 2015, she went to the police again after her husband beat and choked her to unconsciousness. She woke up on the street in her pajamas and ran to the station, only to be turned away again. They said they could not do anything for her, and when she said he would not let her back in the house, they called him. He said it was the wrong number. The police shrugged and she went to her sister’s house. Her husband found her and took her back home. After a series of more beatings, she asked for divorce. He punched her in the eye and attempted to slash her face with a knife. When she raised her arm in defense, he slashed her arm instead. He told her, “You want a divorce? You can have it this way.”<sup>5</sup> She was too afraid to file a criminal case because of the chance he would react with retaliatory violence. She was afraid he would kill her. At the time of the interview, she had managed to escape and was staying at a shelter run by a nongovernmental agency because her father would not let her in his house. She wanted a divorce, but her father refused to give her the marriage certificate for the divorce application. She said he told her, “In our family, no women get divorced. Stay with him even if he wants to kill you.”<sup>6</sup>

Some of the threatening statements the abusers made, including “You want a divorce? You can have it this way,” and “In our family, no women get divorced,” were neither uncommon nor without ostensible grounds for justification in Islamic scripture.

<sup>4</sup> Idem

<sup>5</sup> Idem

<sup>6</sup> Idem



Where the aforementioned question regarding the compatibility of Islam with secularization and human rights finds its hardest opponents is in how Muslim male jurists, those with power in legal jurisprudence, have interpreted Qur'anic texts as itself a conveniently patriarchal text rather than a recognition of the times in which it was revealed – that of, a patriarchal society in which men have the power. These elucidations into harmful exegesis fail to recognize that the literal text does not truly justify nor enforce patriarchies and the fatal inequality burdened along gendered lines.

### **THE ISSUE OF INTERPRETATION: THE QUR'AN AND HADITH**

Reminding that Barlas recovered the derivation of the equality of men and women from Qur'anic scripture, it is important to highlight *Ayat* (verses) that male jurists have used to create laws legalizing inequality in family relations, and of which they have ignored to perpetuate impunity in a man's world. Analytical work by Barlas and Hajjar seek to reevaluate and reinterpret Islamic scripture considering the literal textual context and the temporal context in which such scripture was revealed and recorded. As Barlas states, the point here is to configure a way for men and women to struggle for equality from within the framework of the Qur'an's teachings, thus simultaneously making no severance from their Islamic principles as servants of Allah and showing others the compatibility of women's rights as human rights with Islamic praxis. While she uses four versions of the Qur'an for analysis, the focus here will be on Abdullah Yusuf Ali's<sup>7</sup>

<sup>7</sup> Ali, Abdullah Yusuf. *Holy Quran*. Wordsworth Editions Ltd., 2000.

translation, which will interact with Nessim Joseph Dawood's<sup>8</sup> version that Hajjar analyzes.

Tending first to “retrieving the Qur'an's egalitarianism” in the family and marriage, Barlas refers to the *Ayah* mentioned earlier in relation to the nature of Muslim nation-states. Sameness as a basis of equality makes the foundation for marriage human ontology rather than a contractual function of entitlements or rights. Marriage in Islam is thus based on a “social contract that takes the legal equality of both spouses as a given,” despite the acknowledged existence of patriarchal entitlements over women in greater society. If interpreted in an egalitarian manner, the contract gives women the ability to create the conditions for both marriage and divorce. Moreover, Hajjar recalls a declaration made by the Prophet to men: “the best among you are those who are best toward their wives.” It is written that the Prophet adhered to his own teachings. Though he maintained multiple wives, he is recorded to have treated each with dignity and respect recognizing not only their own intelligence and kindness but also their ownership of their bodies. That he was pressured to reverse a teaching of his by the men in the village regarding a man who beat his wife speaks to the importance of temporal context. The debate was about a man (S'ad bin Rabi') who hit his wife (Habiba bint Zaid) because she had disobeyed him.<sup>9</sup> She complained to her father who complained to the Prophet. He sympathized with her and explained that she had the right to *qisas* (a form of legal retribution), but when men heard word of this, they contested that *qisas* would give

<sup>8</sup> Dawood, N.J. *The Koran: Translated with Notes by N.J. Dawood*.

<sup>9</sup> Hajjar, Lisa. “Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis.” (10)

women “advantages” over men. In pursuit of maintaining peace, the Prophet waited for a revelation from Allah that seemed to have annul his own ruling. But, as Hajjar reasons, “wife beating was quite common in that time and place, so the verse [may have lent] itself to the interpretation that Allah intended to restrict the practice”<sup>10</sup> to instances of disobedience. Though even here, many other *ayat* contradict this notion that violence against a partner is allowed if she has been disobedient.

As *Sura* (chapter) 30, *Ayah* 21 describes, marital relations are to be “tranquil, merciful, and affectionate and the relationship itself as based on companionship, not service or tyranny.”<sup>11</sup> A contradiction seems to arise when such a belief of peace and justice is undermined by interpretations sanctioning *zulm* (tyranny or oppression). Hence, as Hajjar explains, “the Qur’an as God’s word, cannot be made the source of human injustice.”<sup>12</sup> Qur’anic tenets of *qawamma* (authority) and *ta’a* (obedience) permitting gender segregated rights and obligations like women’s expectation to obey their guardians, are then undermined. Barlas further confronts the exegesis that husbands are “guardians” and “wife beaters” here, referring to *Ayah* 4:34,

Men are the *protectors* and *maintainers* of women / because God has given the one more (*strength*) than the other / and because they support them from their means. / therefore the righteous women are devoutly obedient / and guard in (the husband’s) absence what God would have them guard. / as to those women on whose part ye fear disloyalty and ill-conduct / admonish them (first) / (next) refuse to share their beds / (and *last*) *beat* them (lightly) / but if they return to obedience / seek not against them means (of annoyance). (*Ayah* 4:34, Ali 190)

<sup>10</sup> Ibid., 12

<sup>11</sup> Ibid., 11

<sup>12</sup> Idem

She identifies two themes: men's role as the protectors and maintainers of women, and a husband's right to beat a disobedient wife. The language used here is important. To be protectors and maintainers translates a role that is inoffensive and attentive. However, the common interpretation reads this instead as roles of "guardians and rulers," suggesting men's ownership of women in marriage. And the addition of "strength" in parentheses allows for an inference to the different biological natures of the sexes, advancing a "social responsibility" of paternalism; "now a man's strength derives from male biology and ontology, creating sexual differentiation and inequality in the Qur'an."<sup>13</sup> That the Quran never forced the Prophet to force his wives to "obey" him or to utilize abuse of "wife beating" as an instrument of punishment for marital conflict utterly contradicts the language picked out of context as used as justification for violence and seems to stretch further into a veiled assumption that the patriarchal framework permits men's violence.

Furthermore, Barlas calls on the work of Amina Waddud to directly argue against the little-mentioned, but specific use of the word *daraba*, which is used as justification for wife beating. However, it is the word *darraba* that commonly refers to striking or hitting a person, whereas the translation of *daraba* is "to set an example." In this way, it is suggested the interpretation reads as, "prohibiting unchecked violence against females. Thus, this is not permission, but a severe restriction of existing practices."<sup>14</sup> This is especially significant and would translate fittingly within the literal context of which *daraba* is used. *Sura* 4:218 reads,

<sup>13</sup> Barlas, Asma. "Believing Women in Islam: Un-reading Patriarchal Interpretations of the Qur'an." (188)

<sup>14</sup> Ibid

If a woman feareth ill-treatment from her husband, or desertion, it is no sin for them twain if they make terms of peace between themselves. Peace is better. But greed hath been made present in the minds (of men). If ye do good and keep from evil, lo! Allah is ever Informed of what ye do.

The practice of wife beating is at the very least diminished to a tool of last resort, if not already obfuscated by the instruction to always seek “terms of peace” even in the most difficult of situations, like divorce. That the Qur’an guides men to “either take [their wives] back on equitable terms or set them free on equitable terms,” (*Sura* 2:231, Ali) attests the principle that peace is always better and partners should always be wary of their “greed” representing the evil tendencies of jealousy or financial visions. He who submits to such evils offends Allah for it is a self-inflicted attack on His creation’s soul.

Unfortunately, a controversial component of IPV is marital rape. The way in which the Qur’an seems to reveal the issue of men’s “unabridged sexual access” to their wives is hard to grapple with in the context of the *hadith* which showed the Prophet’s respect of his wives. It again leaves space for the patriarchal framework to satiate those *ayat* that feel ambiguous today. *Sura* 2, *Ayah* 223 undermines other scripture that deconstructs the concept of wifely obedience as it expresses that, “your wives are ploughing fields for you; go to your field and as you like.”<sup>15</sup> In this sense, should the wife refuse sex, it could be implied disobedience, directly making both a legalist argument for abuse and marital rape an inconsequential term. While rape by a stranger or acquaintance is punishable, nonconsensual sex in a marriage is not considered a crime under these dominating interpretations of *Shari’a* law.

<sup>15</sup> Hajjar, Lisa. “Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis.” (11-12)

What the incongruous interpretations of the Qur'an and other bodies of Islamic scripture show is not necessarily a religious basis for gender inequality and permission of hierarchical violence. Rather, it shows that some of the most vulgar interpretations in place of others more peaceful and equitable stem from the internal biases of its chief authoritarians. These internal biases are representative of the historical and current sentiments regarding the rights of women in both the private and public spheres. It gives weight to the suggestions Mernissi evoked that Muslim men feared giving women equitable stance as social beings; that their relation to the state and home was submissive not just to Allah but to their male counterparts so that they may not exercise their God-given rights of equality.

#### **THE DEFINITIVE STRUGGLE IN LEGAL LITERATURE AND PRAXIS:**

##### **“WINDOW DRESSING” 1960s - 2000s**

After independence in 1956 from France, Morocco transitioned into a constitutional monarchy with a bicameral Parliament wherein the King holds ultimately all political power as religious leader and head of the government. As a royal decree, King Mohammed V issued Morocco's Personal Status Code in 1957, in which he declared a paternalistic notion to protect women. The Code reflects Islamic tradition and jurisprudence unlike their civil codes which are derived from the French legal system, accounting for all that falls under family relations, including marriage, divorce, child custody and inheritance. As of today, the Code has undergone three major reforms starting from its introduction in 1957 to its attempts to give women more legal recourse in 1993, and in 2004, in which it was issued by Parliament rather than royal decree.

When King Mohammed V introduced the first Personal Status Code or Moudawana, he declared that “Moroccan society could only progress if women were allowed to participate.”<sup>16</sup> However, it actually worked to reinstate Islamic legal principles and the traditional beliefs of Moroccan patriarchal order under a mode of nationalization. This identifies Islam as the official religion and “draws on religious law and jurisprudence to shape national legislation and policies, but does not derive or base its own authority on *Shari’a*.”<sup>17</sup> In this way, religious law and state power interact heavily, and if faced with secularization demands by women’s rights activists, “the state can justify its refusal or even resort to repression against them on the grounds that it has both the prerogative and the duty to defend Islam as an integral part of the national character.”<sup>18</sup> Thus, in following patriarchal interpretations of Islamic scripture, the Code did not require the consent of women to enter a marriage, assigning instead their *wali* or guardian to do this for them. Additionally, a woman had no right to ask or apply for divorce, giving men the sole right to instead.

During the 1970s, women’s rights organization began to appear advocating for the reform of the Moudawana, but as they began to speak out, there was a simultaneous rise of Islamism. In a consequential parallel, the Islamist movement demanded a return to Islam through the institution of governmental adherence to *Shari’a* law. In other countries, like Egypt, Islamism gained reputable credit as they called for structural

<sup>16</sup> Zoglin, Katie. “Morocco’s Family Code: Improving Equality for Women.” *Human Rights Quarterly*, vol. 31, no. 4, 2009, p. 3., doi:10.1353/hrq.0.0121.

<sup>17</sup> Hajjar, Lisa. “Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis.” (25)

<sup>18</sup> *Ibid.*, 24

reformation that worked in favor of the middle- and lower-class strata, including education reform and access. The caveat being the education would move from a secularized framework towards Islamic dogma. This reputation combined with the “generally shared commitment between Islamists and regimes to preserve patriarchal family relations”<sup>19</sup> set to demobilize women’s rights as human rights particularly in the private sphere. Such seeming Islamic resistance to international human rights standards forced Moroccan feminists to illustrate new ways in which women were every bit as equal to men and maintained equitable state and legal protections against violence. Hence, throughout the 1980s, they turned to working within the framework of religious scripture to give justification for their equal status and rights under the law whereas other liberal feminists were adamant to reform through the induction of international human rights standards. Liberal feminists work to adopt a universal, yet external framework into the working legal bodies, while Muslim feminists largely work within the existing internal frameworks to stimulate change on their own terms. Additionally, women’s associations worked to expand their alliance and both sides of the feminist movement focused their visions on the lack of legal protections for women. They worked to separate religion from cultural tradition, and utilized language to appeal perhaps to the nationalistic strain of Moroccan pride by moving away from French in favor of Arabic. Speaking in Arabic at least helped to identify and include the rural regions and their Berber and Amazigh indigenous populations.

<sup>19</sup> Ibid., 6



The 1992 Constitution, 1993 CEDAW ratification, and 1993 reforms to the Moudawana all sought to mollify the activists' movements, but in practice it seemed rather a performance. In its "window dressing,"<sup>20</sup> the Constitution did not install a provision specifically prohibiting the discrimination against women, but by this omission, "the inference [was] that where women's rights [were] concerned, the guarantee of non-discrimination in Article 5 is restricted."<sup>21</sup> Hence, Moroccan *ulama* (Muslim experts in Islamic knowledge) assert that the Moudawana did not violate the constitutional guarantee of equality because the constitution left space for interpretation on the treatment of women in the private sphere, thereby indirectly allowing an inequality in personal status. Additionally, Morocco managed to ratify CEDAW in 1993, but did so with the aforementioned reservations, including Article 16 that contends with marriage and its processes towards termination. The government ruled that this provision was incompatible with *Shari'a* law, which also aligns with King Hassan II's rhetoric referring to the 1993 reforms of the Moudawana. Though he declared himself devoted to the advancement of women as their protector, the commission he set up for the reforms consisted of only men. While the reforms were somewhat modernized, challenges remained.

Under Article 16 concerning marriage and family law, the reforms had intended to ensure the consent of the woman to a marriage, but in practice it means that only an adult woman with no father may contract her own marriage. And even in this specific

<sup>20</sup> "MOROCCO." *International Women's Rights Action Watch*, Hubert H. Humphrey Institute of Public Affairs, 2003, [library.umn.edu/iwraw/publications/countries/morocco.htm](http://library.umn.edu/iwraw/publications/countries/morocco.htm).

<sup>21</sup> Ibid

case, the cultural implications discourage women. Moreover, the reform prohibits *wali* from compelling a marriage, but there remain “many subtle forms of social and family constraints that can subvert the intended protection of the law.”<sup>22</sup> And as for divorce, while the reform expanded the grounds for divorce from simply the husband’s prerogative of *talaq* (repudiation) to judicial and *khol’e* divorce, respectively allowing the woman to initiate divorce under limited circumstances or ‘buy’ her freedom. One such circumstance includes grounds of cruelty, although the woman is burdened with producing proof of maltreatment, which is always a difficult task. Again, women come away with insufficient legal recourse and while she now has the right to initiate divorce, it is restricted and subject to approval by *Shari’a* court. Evidently, there was little amendment to the inequities in marriage and family law, and in consideration of the literacy rates today, (half the population is illiterate and 64 percent of the female population is illiterate)<sup>23</sup> the practical consequences were high, especially in rural areas. This meant the transmission of the legal changes to these populations was little known nor enforced, but the ambiguous language also meant for both rural and urban areas the broad discretion of judges and prosecutors with their own ideas on marriage and divorce.<sup>24</sup> Whether intended or not, this discretion was utilized in most cases because the *adouls* who hear most family code-related cases are “functionaries who are not trained in the law or in jurisprudence.”<sup>25</sup> Thus, either ignorance or awareness to the legal changes, can and are easily snubbed.

<sup>22</sup> Idem

<sup>23</sup> Zoglin, Katie. “Morocco’s Family Code: Improving Equality for Women.” (1965)

<sup>24</sup> “MOROCCO.” *International Women’s Rights Action Watch*.

<sup>25</sup> Ibid

Following the decades of efforts to thrust intimate partner violence into public discourse, March of 2000 marked a sobering watershed moment in Moroccan society. In Rabat, 300,000 demonstrators took to the streets in support of the new national action plan meant to expand women's rights, including preparation to reform the 1993 Moudawana. At the same time in Casablanca, an analogous number of people congregated to protest the new plan. They protested in defense of "religion and the family," warning that this deviation from *Shari'a* conflicted with women's duties to their husbands and contravenes their *Shari'a*-based status as legal minors. The major component that divided opinions was on the matter of giving women more opportunities to divorce if she so chooses, which exposes the fact that the most "common reason women seek to end a marriage is to extricate themselves from a situation in which they were vulnerable to domestic violence"<sup>26</sup> in Morocco. In fact, a report published on domestic violence between 1984 and 1998 showed 28,000 reported acts of domestic violence perpetrated by men against women, which was what had prompted the national plan in the first place. Unfortunately, the controversy made the government reluctant to institute these progressive changes and accommodated conservative fears, leading to the withdrawal of the plan.

Despite this drawback, King Mohammad VI's ascendance to the throne in 1999 promised more robust reforms to improve the status of women. He had declared,

How can society achieve progress, while women, who represent half the nation, see their rights violated and suffer as a result of injustice, violence and

<sup>26</sup> Hajjar, Lisa. "Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis." (2)

marginalization, notwithstanding the dignity and justice granted to them by our glorious religion?<sup>27</sup>

While his own visions on the equality of men and women and on the prohibition of IPV may be commendable, critics questioned whether he cared more for his international reputation as a leader in the Islamic world towards liberalism or for the actual advancement of state intervention and protection on behalf of women who are victims of, or vulnerable to domestic abuse. In effort to show that he respected and welcomed reformation, he lauded experts from civil society, asked that they help to review personal status codes from other Muslim countries and then asked the Commission to debate and discuss the resultant issues in order to produce a new code in 2004. In Parliament's adoption of the new Moudawana, the hope was to see the eradication of the discrimination against women, but in its practice, frustrations remain and sentiments towards IPV have been slow to change. Nevertheless, Parliament explicitly adopted the principle that husbands and wives have equal rights and equal duties in the family. The new Code also targets the judicial system from judges, to prosecutors and law enforcement, emphasizing their responsibilities to safeguard always the rights of women and children seen through exercising increased care and oversight of domestic abuse cases. But in order for such provisions to be passed, it had to be countered with more ambiguity in the language, so that interpretive space is created for traditional Islamic tenets. Again, a judge is given extra discretion in applying "certain articles of the Moudawana than he customarily does when rendering decisions under other codes," often

<sup>27</sup> Zoglin, Katie. "Morocco's Family Code: Improving Equality for Women." (967)

citing Islam in his reasoning. For example, while the legal minimum age of marriage has been raised to 18 for both men and women, underage marriage is still possible if the judge can justify it, which is more often the case in rural regions than in urban regions due to higher rates of illiteracy and poverty – daughters traditionally are given away in order for her family to receive a dowry from her new husband's family.

The 2004 reforms also expanded means for divorce for women to initiate, including divorce by mutual consent, divorce in exchange for compensation, breach of marital contract, abandonment and divorce based on irreconcilable differences. The latter of which refers to issues of domestic abuse – but, again, while the law may plainly give women these new rights, the application thereof throughout the judicial system can ignore them at every turn. The likelihood of a quick divorce in addition to requested protection orders depend largely on if the judges apply the law in a manner that is consistent with the Moudawana's intention of equality and protection for vulnerable statuses. Again, it is often the case that judges apply their personal "visions of the family unit," thereby dissolving the power of the law to protect. Moreover, there seems to be a lack of political will by the government to promote the reforms across the state, which has ultimately served to stagnate the practical experience of the new legislation. Many women have reported they were unaware of their rights under the new Code, including their right to divorce and the grounds for it. It is useful to note however that it has come with mixed success. Those judges and prosecutors that actively work toward the well-being of women and children in these domestic violence cases have proven to exercise the spirit of the Moudawana in helpful ways to protect victims. In this way, the greater

discretion has given judges the opportunity to ensure the fair treatment of women. It would seem then that while changing the legal language to enforce equality ensures rights and duties in theory, the practice of such depends on the dissolution of the patriarchal framework in which the law is crafted. Nonetheless, it is not lost on the organizations and peoples fighting for the abolition of IPV that the 2004 reforms have constructed a large platform from which to project active public discourse on gender equality in the family.

### **THE LAW TODAY**

Even in recent years, the Moroccan government seems to add incremental provisions to the Family Code and Constitution when it senses that civil frustrations may spillover and be caught on the international news reel – a kind of window dressing that seeks to temper controversy rather than radically endorse equal rights in the family and equal protections under the law, no matter the proud rhetoric King Mohammed VI speaks to the public about championing the rights of women. As Silvia Gagliardi from the Irish Centre of Human Rights describes, the position of women’s rights in the age of the new Constitution established in 2011 is that in which the state “co-opts women’s movements by involving them in the policy process – all while policies fail to address policy goals.”<sup>28</sup> Post-2011, “political change becomes dependent on the coincidence of interests between the king and the concerned social group, whereby the most important condition is the unquestioned power of the king to shape the policy environment.”<sup>29</sup> And often, those reforms are meant to serve the monarchy’s interests over the actual special group’s policy

<sup>28</sup> Gagliardi, Silvia. “Violence against Women: The Stark Reality behind Morocco’s Human Rights Progress.” *The Journal of North African Studies*, vol. 23, no. 4, 14 Aug. 2017, p. 571., doi:10.1080/13629387.2017.1363649

<sup>29</sup> Ibid

goals. Thus, while the 20 Feb Movement (20FM) rallied people to the streets to demand socio-political reforms in 2011 and managed to pressure the king into introducing a modernized constitution, the body of literature addressed the surface of issues subordinating women in the private sphere, but did not target their roots causes. The preamble declares a commitment to “prohibit[ing] and combat[ing] all discrimination whenever it encounters it, for reason of sex, or colour, of beliefs, of culture, of social or regional origin, of language, of handicap or whatever personal circumstance that may be,” but provides an asterisk noting that these provisions only apply “in the context of compliance with the permanent characteristics of the kingdom.”<sup>30</sup> Thus, despite its declaration of gender equality and the entitlement of each to the security of their person and kin, and their moral integrity “as well as prohibition of cruel, inhuman or degrading”<sup>31</sup> behavior a partner may infringe on the other, the condition permits the state to destabilize the nature of individual rights. Moreover, the new Constitution fails to provide a specific definition of gender-based violence nor a law barring impunity for it in the penal code, despite these being two of the priority purposes for women’s rights organizations.

In a positive light, 2018 brought a refreshed feeling that the issue of intimate partner violence may soon be taken seriously at every level of the social system. The Moroccan Parliament adopted Law No. 103-13 The Law Combating Violence against Women, in which the prolific means of abuse used against women were finally identified

<sup>30</sup> Ibid., 572

<sup>31</sup> Idem

and expanded upon, as well as criminalizing some forms of domestic abuse, establishing prevention measures, and new protections for survivors. HRW notes that the new law defines violence to include, “any act based on gender discrimination that entails physical, psychological, sexual or economic harm to a woman.”<sup>32</sup> However, its critics were quick to expose its many flaws and loopholes. While the law recognizes the nonphysical means of violence against women, it does not separately define domestic violence nor does it criminalize marital rape. The promising provisions seem to be matched with omissions that work to weaken the law altogether, such as establishing forced marriage as a crime while requiring victims to file for criminal prosecution to obtain protections, which few can do, or the failure to reinstate the obligations of law enforcement, public prosecutors, and investigative judges in domestic violence cases. And while it importantly obligates public authorities to create educational programs on violence against women and create specialized units to serve women and children in courts, government agencies, and security forces, but fails to provide the mechanisms for funding, monitoring, or holding authorities accountable in these committees. Moreover, while the law recognizes the multitude ways to inflict abuse, it does not address necessary short-term solutions, such as the waiting period to confirm a divorce. Permitting protection orders only during a criminal prosecution or after a criminal conviction ignores the extremely dangerous period immediately following a woman’s attempt to leave her abuser. Protection orders in

<sup>32</sup> “Morocco: New Violence Against Women Law.” *Human Rights Watch*, 26 Feb. 2018, 1:00 Am, [www.hrw.org/news/2018/02/26/morocco-new-violence-against-women-law#](http://www.hrw.org/news/2018/02/26/morocco-new-violence-against-women-law#).



effect immediately when requested can be life-saving if the law abides and if the local law enforcement commits to its duty to safeguard the woman and her children.

Furthermore, the law does not ensure financing for these reforms and does not allocate specific funding for shelters. As of 2018, only ten shelters are running in the country, all of which are run by nongovernmental agencies and a few of which receive any government funding. Finally, and perhaps most importantly to the point of believing women, the law does not direct the courts to consider all forms of evidence of IPV, nor does it suggest that a “victim’s court testimony may be sufficient evidence to reach a conviction.”<sup>33</sup> While the legislators have adopted its most modernized piece of legal work, the judicial system must work to implement it to the best of their capabilities to enforce protections for women and encourage the peace in marriage that the Qur’an inspires.

<sup>33</sup> Ibid

## DISCUSSION AND CONCLUSIONS

The analysis of intimate partner violence is difficult to narrowly source or structure for its prevalence has so many protectors. What is evident is that there is a discernable need for a palpable reworking of social structures and the legal systems onto which they impose their values. The point of this endeavor was to fundamentally source the issue of inequities within differing national structures of masculinity and femininity necessitates a historical contextualization. Such analysis realizes patriarchy and the normative value of violence as an intellectual framework to provide a common denominator between the two systems in Morocco and the United States.

In laying these foundations, the shift towards combatting the injustice within the legal literature and praxis exposes the need to re-train and sensitize the system actors including the legislators informed by both individual beliefs regarding family structure and the relationship between a man and a woman and in the case of Muslim societies specifically, the Muslim jurists or *ulama*. Duties need to be clear and enforced in the judicial courts from the prosecutors to the judges, and to the law enforcement who often fail on the frontlines to believe and protect victims of IPV. It is in these very incidents that a victim's general mistrust of her community and the capacity of her state to intervene and protect her and often her children can result in their own crimes. As is called for in cases of IPV against a woman, judges must exercise their obligations to safeguarding their peoples by taking a comprehensive look, factoring in all that may contribute to the issue at hand when they are afforded discretions in analyzing the law

and the nuances of the cases before them. Otherwise, they perpetuate the nature of the nation-state in which violence prospers. Indeed, the state encourages a hierarchy of dominance and protects male power by “ignoring the use of violence against women and codifying the male perspective in law.”<sup>1</sup> And because the male experience is “the dominant point of view and defines rationality, women are pushed to see reality in its terms. To this point, feminist theorist Catharine MacKinnon stated in a 1987 debate: “We are looking to empower women. We have the audacity to think that we might be able to use the state to help do it.”<sup>2</sup> In this configuration, only then can the immortality of IPV be comprehended today, and a full recognition of legal, jurisdictional and social flaws regarding such can prove the dire need for change.

It is also important to note as a point of discussion that the focus on IPV between heterosexual (ex)partners does not mean to undermine the IPV that pervades homosexual relationships. Issues of the “double-closet” methods are as much abusive as nonphysical violence in any case of IPV and serves to further isolate victims from their families and communities.

Additionally, a question that may still linger now is at the forefront, why don’t women avoid these types of men? As Addimando’s case shows, friends and family described Grover as a playful and charming man. This is what the women see at first, too. And in some of the accounts of Moroccan women, their husbands often did not begin their abusive patterns until months or even years later into their marriage. An abusive

<sup>1</sup> Goodmark, Leigh. *A Troubled Marriage: Domestic Violence and the Legal System*. (11)

<sup>2</sup> Ibid

relationship rarely begins with overt violence, much less any violence that can be considered a crime in legal literature. IPV is “insidious” wherein the nonphysical forms of abuse like emotional and psychological abuse can escalate to physical and sexual violence as “an abuser’s need and/or ability to exert power and control increases.”<sup>3</sup> Journalist, Natalie Nanasi, said it perfectly: “If we don’t acknowledge the ‘small’ things – yelling or screaming, name-calling, and controlling or monitoring communication and social media – victims may not realize they are in danger until it is too late.”<sup>4</sup>

Along this vein, another horrific outcome of IPV if not combatted early on by the judicial and legal systems is the endemic of mass shootings, which is largely only a serious problem in the United States due to incredible influence the National Rifle Association (NRA) has on Capitol Hill. Perhaps, we may consider that while Morocco has its influence from Islamism that has slowed women’s rights in policy-making, the United States has its influence from big corporations. Stalking and sexual assault are often indicative of a potential for future mass violence – according to a research report performed by the American advocacy group *Everytown for Gun Safety* between January 2009 and December 2017, in at least 54 percent of mass shootings the perpetrator shot an intimate partner or family member. And, in an average month, 52 women are shot to death by an intimate partner.<sup>5</sup> As Issa entitled her work, mass shootings are a “profoundly masculine act,” in which the concept of the hegemonic masculinity complex creates a patriarchal system that collaborates as well with racism, homophobia, classism, etc.

<sup>3</sup> Nanasi, Natalie. “The Trump Administration Quietly Changed the Definition of Domestic Violence and We Have No Idea What For.”

<sup>4</sup> Ibid

<sup>5</sup> “Domestic Violence.” *Everytown for Gun Safety*, 2019, [everytown.org/issue/domestic-violence/](https://everytown.org/issue/domestic-violence/).

Moreover, such a collaboration aligns with the fact that mass murder as a subset of homicide is the only one that is a predominantly white phenomenon. The purpose here is how to expand the reach of laws in order to re-define IPV, and to account for the serious correlation between the supposed misdemeanor of stalking to a later mass murder.

Ultimately, analyzing the two legal systems reveals the origins and operations of the respective societal cultures as regards IPV. And in analyzing the interplay of the state, cultural and religious actors, there is a realization that IPV and violence against women as a whole are attributed not to a “particular religion or culture,” but to “totalitarianism and patriarchy as the core impediments to women’s advancements.”<sup>6</sup> These nation-states need to undergo profound re-definitions, re-classifications and re-interpretations at every level in order to create a cooperative and effective reality that is trained and educated to fundamentally believe the equality of men and women.

<sup>6</sup> Gagliardi, Silvia. “Violence against Women: The Stark Reality behind Morocco’s Human Rights Progress.” (13)

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