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PARTICULARITY AND GENERALITY: CHALLENGES OF FEMINIST THEORY AND PRACTICE IN WORK ON WOMAN-ABUSE

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Since the beginning of the women's movement, feminist legal theory has been based largely upon exploration and analysis of the particular, unique experiences of women's lives. In this Article, Professor Schneider asserts that feminist theory founded exclusively upon a particularity analysis is inadequate to capture the full range of women's experience. Drawing upon her experience in the area of woman-abuse, Professor Schneider challenges feminist theory to forge a conceptual link between particularity and generality in order to develop both more inclusive feminist theory and more effective feminist practice.

INTRODUCTION

RECENT EXPERIENCE IN FEMINIST THEORY AND PRACTICE IN WORK ON WOMAN-ABUSE

Concern with the crucial interrelationship between theory and practice in many different contexts has animated my work; I have explored this issue particularly in the area of women's rights and feminist legal theory.¹ I have argued that feminist legal theory reflects a dialectical

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¹ My writing has focused on the link between theory and practice in a wide variety of different contexts, including jurisprudence, feminist legal theory, women's rights, and legal education. See generally Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 *Women's Rts. L. Rep.* 195 (1986) [hereinafter Schneider, *Describing and Changing*] (focusing on tensions between themes of victimization and agency in problem of expert testimony on battering); Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 *N.Y.U. L. Rev.* 589, 598-610 (1986) [hereinafter Schneider, *The Dialectic of Rights and Politics*] (examining role of rights in claims for equality, reproductive choice, and protection

interrelationship between theory and practice.² Feminist theory rests on the fundamental notion that women's experience is the central starting point of theory: theory flows from experience in the world, and then theory refines and modifies that experience.³ My previous work has emphasized the need for close attention to the interrelationship between theory and practice in our experience of the complexity of women's lives and in the articulation of women's experiences into legal claims.⁴

However, while working on a report for the Ford Foundation assessing national legal reform efforts for battered women over the last several years, I experienced a sense of disconnection between the two dimensions of my own work, feminist theory and feminist practice.⁵ Recent developments in feminist legal theory, both the move to "grand" theory and the opposite extreme of personal narrative, seem incomplete and suggest potential dissociation from the richness of feminist practice.⁶

from sexual harassment and battering); Elizabeth M. Schneider, *Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom*, 11 J.C. & U.L. 179 (1984) (examining problem of political interference in law school clinical programs and resulting implications for academic freedom); Elizabeth M. Schneider, *Rethinking the Teaching of Civil Procedure*, 37 J. Legal Educ. 41 (1987) (emphasizing the need for greater link between theory and practice in the teaching of civil procedure, outlining some strands of critique of procedure, and suggesting alternative approaches to civil procedure); Elizabeth M. Schneider, *Task Force Reports on Women in the Courts: The Challenge for Legal Education*, 38 J. Legal Educ. 87 (March-June 1988) (arguing that state task force reports on status of women in courts have important implications for legal education); Elizabeth M. Schneider, *Violence Against Women and Legal Education: An Essay for Mary Joe Frug*, 26 New Eng. L. Rev. 843 (1992) [hereinafter Schneider, *Violence Against Women*] (describing Battered Women and the Law class and other curricular work on woman-abuse as providing opportunity to explore interrelationship among theory and practice and scholarship and activism).

² See generally Schneider, *The Dialectic of Rights and Politics*, supra note 1.

³ See *id.* at 601.

⁴ See note 1 supra.

⁵ See Elizabeth M. Schneider, *Legal Reform Efforts to Assist Battered Women: Past, Present and Future* at 6 (1990) [hereinafter Schneider, *Legal Reform Efforts*] (report on file with the New York University Law Review).

⁶ Martha Fineman shares this view. See Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 Fla. L. Rev. 25 (1990) (analyzing existing and emerging themes that dominate contemporary feminist legal discourse). In this essay, she observes:

[O]n the broadest level feminist legal thought seems unanchored. It drifts between the extremes of 'grand theory,' which is totalizing in its scope and ambitions, and personal narratives, which begin and end with the presentation of one individual's unique experience. Neither of these extremes does much to further the discussion of feminist issues because they obscure more than they illuminate. Between these extremes, in that space between something so exclusively personal as to be beyond generalization or political content, and something so general and abstract as to be removed from the everyday realities of women's lives, lies fertile ground for feminist methodology.

Id. at 25-26. This Article is an effort to begin to plow this "fertile ground."

Of course there are exceptions to this trend. See, e.g., Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. Pa. L.

Indeed, despite my own best efforts to maintain the interconnection between theory and practice, I found myself moving back and forth between these two vantage points while working on this report.⁷ Because the connection between women's actual experiences and the theory and policy implications that flow out of these experiences is the unique contribution that feminist legal theory can make to law,⁸ it is critical to highlight this connection in both our theory and practice. This Article attempts to forge this link by examining tensions in current feminist theory and practice in legal work on woman-abuse.⁹

The rebirth of the women's movement in this country during the 1960s led to the development of many new areas of and perspectives on the law.¹⁰ The contributions of the women's movement in the field of battering have been particularly dramatic. The theoretical construct of a "battered woman" developed only within the last twenty years. Since this development, the battered women's movement has made important practical strides as well. Specifically, it has focused on providing shelter and services for battered women, educating the public about the immediacy of the issue, and developing legal remedies for battered women including orders of protection and criminal and tort remedies. The urgent

Rev. 379 (1991) (arguing against redefining substantive and procedural rules involving self-defense claims in women's homicide trials); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1 (1991) (illustrating contrast between women's lives and legal and cultural stereotypes through battered women's accounts of woman-abuse).

⁷ This report evaluated national legal reform and public education advocacy efforts and focused on reforms to assist battered women. My concern was that in both assessing current reform efforts and envisioning new ones, feminist theory and practice often seemed to be distinct vantage points rather than interrelated.

⁸ See Schneider, *The Dialectic of Rights and Politics*, supra note 1, at 601-04 (arguing that theory is not general principle but rather is based on direct experiences).

⁹ This Article reflects the importance of the interrelationship between theory and practice in several ways. First, it brings together several sources of insight on battered women that have existed as somewhat distinct and unrelated bodies of knowledge: the experiences of battered women, battered women's activists and advocates; feminist legal theory; and social science perspectives on battering including a growing body of feminist literature. Second, this Article draws on and develops four distinct aspects of my own work on the interrelationship between theory and practice. It expands on my earlier work on the dialectical interrelationship between theory and practice in the women's rights movement generally. See Schneider, *The Dialectic of Rights and Politics*, supra note 1, at 598-610. It builds on my previous exploration of how feminist legal work must strive to describe women's experiences in particular, but also allow for the possibility of change, see Schneider, *Describing and Changing*, supra note 1, at 198-200, and is based on my recent practical reform-oriented work in surveying and evaluating national advocacy efforts on behalf of battered women. Finally, it explores issues that emerged from my efforts to link theory and practice in a class on Battered Women and the Law. See Schneider, *Violence Against Women*, supra note 1.

¹⁰ For example, the women's movement articulated legal claims of sexual harassment. See Schneider, *The Dialectic of Rights and Politics*, supra note 1, at 621 & n.165, and fueled claims for reproductive freedoms. See *id.* at 631 n.206.

nature of this work cannot be overstated. Abuse of women by male partners is the leading cause of injury to women in the United States.¹¹ One woman in the United States is beaten every 18 seconds,¹² and between two and four thousand women die every year from abuse.¹³ Police involvement in domestic violence cases nationally exceeds police involvement in murder, rape, and all forms of aggravated assault.¹⁴

As I surveyed the work of the battered women's movement over the last twenty years and met with advocates from around the country, I saw the breadth, depth, and creativity of this work. Many groups and organizations have emerged around the country to assist battered women. They have founded shelters or networks of "safe homes,"¹⁵ set up telephone hotlines, challenged police practices that fail to intervene effectively to assist battered women,¹⁶ drafted new legislation to protect battered women both through civil orders of protection and criminal remedies,¹⁷ and developed programs to work with battering

¹¹ See *Women, Violence and the Law: Hearing Before the House Select Comm. on Children, Youth and Families*, 100th Cong., 1st Sess. 3 (1987) (statement of Rep. George Miller).

¹² See Report of the Gender Bias Study of the Supreme Judicial Court, 23 Suffolk U. L. Rev. 575, 584 (1989) (citing U.S. Bureau of Justice statistics, 1986).

¹³ See Federal Bureau of Investigation, U.S. Department of Justice Uniform Crime Reports for 1983, at 12 (1984).

¹⁴ See Schneider, *Legal Reform Efforts*, supra note 5.

¹⁵ *Id.* at 59.

¹⁶ *Id.* at 46-49.

¹⁷ For a discussion of the range of state civil and criminal legislation that has been developed to assist battered women, see *id.* at 27-44. For an analysis of state legislation regarding restraining orders, see Peter Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 Fam. L. Q. 43 (1989).

Major federal legislation on domestic violence includes the Victims of Crime Act of 1989 (VOCA), 42 U.S.C. § 10601 (1989), which offers compensation to victims of domestic violence, and the Family Violence Prevention and Services Act of 1984, 42 U.S.C. § 10410 (1989), which assists states in providing services to prevent family violence, and coordinates research, training, and clearinghouse activities.

Senator Biden has proposed federal legislation on rape and domestic violence in the Violence Against Women Act of 1991, which is presently being debated in Congress. See S. 15, 102nd Cong., 1st Sess. (1991). The Violence Against Women Act is a comprehensive act containing five titles. Title I, *Safe Streets for Women*, increases penalties for sex crimes and establishes the "National Commission on Violent Crimes Against Women." Title II, *Safe Homes for Women*, protects women from domestic violence, promoting the arrest and prosecution of abusive spouses. Title III, *Civil Rights for Women*, establishes a federal cause of action in civil suits for damages and injunctive relief for victims of gender-based assaults. Title IV, *Safe Campuses for Women*, allows the Department of Education to provide grants to educate campuses and to hold disciplinary proceedings on campuses for abusers of women. Title V, *Equal Justice for Women in the Courts*, extends the protections in the current rape shield law to other criminal and civil crimes, and calls for the education of judges and court personnel on topics involving violent crimes against women. See *id.* Although Senate Bill 15 was passed by the Senate Judiciary Committee on July 18, 1991, it did not make it to the Senate floor for a vote in the 102nd Congress. Its counterpart, House Resolution 1502, H.R. 1502, 102nd Cong., 1st Sess. (1991), has been under consideration by five Subcommittees, and hearings have been held by the Subcommittee on Crime and Criminal Justice. Violence Against Women Act Up-

men.¹⁸ Lawsuits have resulted in improved police and court practices.¹⁹ In addition, government reports,²⁰ legal and social-science literature,²¹ and media coverage²² have proliferated. Advocates and scholars are also formulating new legal approaches to violence against women.²³

date, NOW Legal Defense and Education Fund, Oct. 30, 1992; see also Andrea I. Kelly & Elisa A. Lang, *Violence Against Women: Proposed Legislation*, 1 *Tex. J. of Women and the Law* 285 (1992) (summarizing history and scope of Title III of the Act).

¹⁸ For a discussion of batterers' programs and the reasons why men batter, see David Adams, *Treatment Models of Men Who Batter: A Profeminist Analysis*, in *Feminist Perspectives on Wife Abuse* 176, 176-96 (Kersti Yllo & Michele Bograd eds., 1988) [hereinafter *Feminist Perspectives*]; James Ptacek, *Why Do Men Batter Their Wives?*, in *Feminist Perspectives*, supra, 133, 133-56.

¹⁹ See, e.g., *Thurman v. Torrington*, 595 F. Supp. 1521, 1527-28 (D. Conn. 1984) (finding actionable equal protection claim where abused wife and son alleged city and police provided less protection for assault victims in context of domestic relationship); *Bruno v. Codd*, 396 N.Y.S.2d 974, 976 (Sup. Ct. 1977), rev'd on other grounds, 393 N.E.2d 976 (N.Y. App. Div. 1979) (holding that police should not automatically decline to make arrest simply because assailant is victim's husband); *Nearing v. Weaver*, 670 P.2d 137, 139 (Or. 1983) (holding that police officers who fail to protect intended beneficiary of a judicial order can be held liable despite defense of official immunity); but cf. *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189 (1989) (holding that state has no constitutional duty to provide members of general public with protective services).

²⁰ See, e.g., Attorney General of the U.S. Dep't of Justice, *Task Force on Family Violence, Final Report* (1984); *The Family Violence Prevention and Services Act of 1984: A Report to Congress* (1988); Peter Finn & Sarah Colson, U.S. Dep't of Justice, *Issues and Practices, Civil Protection Orders: Legislation, Current Court Practice, and Enforcement* (1990); Gail A. Goolkasian, U.S. Dep't of Justice, *Issues and Practices, Confronting Domestic Violence: A Guide for Criminal Justice Agencies* (1986) [hereinafter *Confronting Domestic Violence*]; U.S. Comm'n on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (1982) [hereinafter *Under the Rule of Thumb*].

²¹ Examples of recent books on woman-abuse include Julie Blackman, *Intimate Violence* (1989); *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence* (Daniel J. Sonkin ed., 1987); Edward W. Gondolf & Ellen R. Fisher, *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* (1988); Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (1988); Lee A. Hoff, *Battered Women as Survivors* (1990); Elizabeth H. Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* (1987); Lenore E. Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* (1989); *Feminist Perspectives*, supra note 18.

²² For a discussion of popular media images of woman-abuse, see Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 *Vand. L. Rev.* 1665 (1990).

²³ For example, although tort remedies for battered women against abusers had historically been barred by the doctrine of interspousal immunity, the demise of interspousal immunity has made it possible to develop tort remedies for battered women. Because of the potential for compensatory, pain and suffering, and punitive damage awards, tort remedies are becoming an increasingly available remedy for some women. See generally Leonard Karp & Cheryl L. Karp, *Domestic Torts, Family Violence, Conflict and Sexual Abuse* (1989 & 1990 Supplement); Laura D. Koss, *Tort Litigation: A Remedy for Battered Women That Should Not Be Ignored* (March 30, 1992) (unpublished manuscript on file with the New York University Law Review).

Battering is now being articulated as a bias-motivated hate crime intended to intimidate or injure an individual because of her gender. See Lois Copeland & Leslie R. Wolfe, *Violence*

It is now a time of enormous challenge and opportunity for work on male battering of women. Stories of women murdered by battering men have received widespread publicity.²⁴ Recent grants of clemency to battered women who have killed their abusers have garnered national attention.²⁵ In states where restraining order legislation or mandatory arrest of batterers have strengthened legal remedies, reporting rates have increased dramatically; this increase suggests that the problem is even

Against Women As Bias-Motivated Hate Crime: Defining the Issues (1991); Peter Finn, *Bias Crime: A Special Target for Prosecutors*, *The Prosecutor*, Spring 1988, at 9. In addition, battering is defined as a civil rights violation in the proposed Violence Against Women Act of 1991. See Andrea Brenneke, *Civil Rights Remedies for Battered Women: Axiomatic and Ignored* (unpublished manuscript on file with the New York University Law Review); note 17 *supra*. Both of those approaches are premised on a rejection of the notion that domestic violence is private, but assert instead the public dimension of the harm. One commentator has suggested the applicability to battered women of the legal framework of involuntary servitude in the thirteenth amendment in which an individual is coerced through use of or threatened physical force in providing services against her will. See Joyce E. McConnell, *Beyond Metaphor: Battered Women, Involuntary Servitude and the Thirteenth Amendment*, 4 *Yale J. L. & Feminism* 207, 210 (1992).

Finally, advocates have begun to articulate battering as a violation of international human rights, which again challenges the public/private dichotomy. See Charlotte Bunch, *Women's Rights As Human Rights: Toward a Re-Vision of Human Rights*, 12 *Human Rts. Q.* 486 (1990); Symposium, *Violence Against Women: Addressing a Global Problem* (Ford Foundation Women's Program Forum, 1992); Dorothy Q. Thomas and Michele Q. Beasley, *Domestic Violence As a Human Rights Issue* (unpublished manuscript on file with the New York University Law Review).

²⁴ See Schneider, *Legal Reform Efforts*, *supra* note 5, at 13.

²⁵ Newspapers across the country have recorded developments in the clemency cases. See Kay Bartlett, *Spousal Homicide Law: "Open Season" on Men—or "Domestic Violence?"* *L.A. Times*, Mar. 17, 1991, at A33; *Governor Orders Review of Abuse Convictions*, *Wash. Times*, May 20, 1991, at A2; Stan Grossfeld, "Safer" and in Jail: *Women Who Kill Their Batters*, *Boston Globe*, Sept. 2, 1991, at 1; Mary O'Doherty, *Death Sought in "Battered Woman" Case*, *U.S.A. Today*, Sept. 13, 1991, at 3A; Andi Rierden, *Citing Abuse, Women Ask for Clemency in Killings*, *N.Y. Times*, May 12, 1991, Sec. 12 CN, at 1.

In January 1991, Ohio Governor Richard Celeste, before leaving office, first granted clemency to twenty-six battered women incarcerated for killing or assaulting their batterers. See *Governor Orders Review of Abuse Convictions*, *supra*, at A2. Governors in Maryland, Illinois, New Hampshire, Louisiana, New Jersey, Tennessee, and Washington granted clemency to a total of 17 women soon afterwards. See O'Doherty, *supra*, at A3. The governors of Arizona, Massachusetts, Delaware, Michigan, Pennsylvania, Florida, Connecticut, Texas, New York, and California have all considered similar grants.

Two of these governors, Celeste of Ohio and Schaefer of Maryland, have been criticized for their decisions to grant clemency. See Tamar Lewin, *Criticism of Clemency May Affect Efforts to Free Battered Women*, *N.Y. Times*, Apr. 2, 1991, at A17. Some commentators believe such criticism stems from the perception that pardoned women did not fit the mold of the "perfect victim":

One of the problems with these cases is that everyone expects the perfect clean victim . . . and no one is perfectly clean. That's a reason why a lot of these women plead guilty and don't go to trial.

Id; see also text accompanying notes 119-26 *infra* (discussing imprecision in describing battered women as agent or victim).

more pervasive than previously imagined.²⁶ However, at the same time that legal reform efforts have expanded, public response to clemency efforts has rekindled a national debate on issues of violence against women and women's "retaliation."²⁷ In addition, Professor Anita Hill's experience in alleging sexual harassment against Supreme Court nominee Clarence Thomas has underscored the tenacity of views of women as "unreasonable" and provocative.

This recent attention, these underlying tensions, as well as my own work in surveying national legal reform efforts for battered women,²⁸ suggest a need for examination of the theoretical and strategic implications of recent work on woman-abuse.²⁹ New experiences with and understandings of woman-abuse in practice compel us to rethink some of our original assumptions. Feminist theorists and practitioners must confront the theoretical implications of strategic choices and the strategic implications of theoretical choices in women's rights litigation. It is our task both to "describe" and allow for "change": describe a legal problem for women—describe it in detail, in context—and translate it to unsympathetic courts in such a way that it is not misheard, and at the same time does not remain static. We must develop legal theory and practice that are accurate to the realities of women's experiences but that also take account of complexity and allow for change.³⁰

²⁶ Although woman battering is an underreported and underrecorded crime, the passage of comprehensive laws protecting battered women has been associated with an increase in recorded incidents of violence. The state of Connecticut provides one example. Connecticut enacted a comprehensive Family Violence Prevention and Response Act in 1986. Conn. Gen. Stat. §§ 46b-15, 466-38 a to f, 54-1g (1986) (codified as amended at 1991 Conn. Pub. Act 91-381). Prior to the passage of this Act, arrests reported by police ranged from 7000 to 9000 batterers each year. See generally Connecticut Department of Human Resources, 1985 Domestic Violence Arrest Report. By contrast, after the passage of the Act, arrests increased dramatically, to 22,912 reported in 1990. See Family Violence Arrests, 1990 Annual Report, Excerpt from the Uniform Crime Reporting Program publication, Crime in Connecticut 1990, Family Violence Reporting Program, Department of Public Safety. This phenomenon has to do both with improved police response to reports by battered women and improved record keeping on the part of the police. One of the mandates of the Act was the establishment of a Family Violence Reporting Unit with the Department of Public Safety. The earlier figures were taken from reports made to the Department of Human Resources, while the latter figures in 1990 were gathered by the established unit acting pursuant to statutory mandate.

Other states have noted a similar increase in reported violence. See, e.g., Stan Grossfeld, *Women Suffer War on the Home Front: Love and Terror*, Boston Globe, Sept. 1, 1991, at M1 (noting jump in reported incidents of domestic violence in Boston from 5023 in 1986 to 9112 in 1990, and similar increase in police arrests under laws in force in Massachusetts).

²⁷ See note 25 and accompanying text *supra*.

²⁸ See Schneider, *Legal Reform Efforts*, *supra* note 5.

²⁹ As I have recently discussed elsewhere, that examination should include re-conceptualization of some basic theoretical frameworks, such as the meaning of "privacy" for women who have been battered. See Elizabeth M. Schneider, *The Violence of Privacy*, 23 U. Conn. L. Rev. 973, 983 (1991).

³⁰ See Schneider, *Describing and Changing*, *supra* note 1.

Moving between theory and practice in work on woman-abuse reveals an underlying paradox in feminist theory: feminist theoretical work must simultaneously be more richly "particular" in documenting women's experiences, as well as more "general," linking violence against women to women's subordination within society and to more general social problems of abuse of power and control.³¹ This Article underscores the need to look at women's real life situations in context, while holding on to both particularity—the particular experiences of women who are battered by men—and generality, broader understandings of the problem of violence and gender. I use the term "particularity" in this Article to mean the importance of describing the complexity of women's experiences non-simplistically, accurately, and in greater detail. In the context of woman-abuse, this means that we must both understand the dimensions of the problems that are unique and particular to women, and at the same time explore the more "general" dimensions of the problem. Here I discuss "general" dimensions in two senses: first, the way in which woman-abuse must be viewed as linked to larger problems of societal violence; and, second, as linked to women's subordination in general. Exploration of the dimensions of both particularity and generality in feminist theory and feminist practice is necessary to the development of feminist legal work.

This argument is likely to be controversial, perhaps even heretical, for several reasons. First, feminist theory has largely been premised on a notion that feminist work emerges out of women's particular and unique experiences. Thus it could be said that feminist theory has been based on a "particularity" strand of analysis and on denial, sometimes even rejection, of the "general." This tendency is heightened in the area of male violence against women, which is premised on a theoretical framework based on gender subordination and thus understood as gender-specific. Second, in the early stages of the battered women's movement, there has been a strategic need for and success with certain definitional categories and certain characterizations of battered women's experiences; it is unsettling to challenge these familiar categories and characterizations. Finally, feminist legal theory has correctly focused on the importance and specificity of women's situated experience. Recent criticism of the tendency toward essentialism within feminist legal theory underscores the importance of this emphasis on particularity and even argues for a greater degree of particularity in our descriptions of "women's" experience.³² The danger in moving away from particularity and into general-

³¹ Martha Minow helped me formulate this characterization of the tension between particularity and generality in feminist theory.

³² See generally Elizabeth V. Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (1988); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42

ization is that the specificity and richness of women's situated experience will be eliminated and proposed reforms or theories premised on more general understandings will become irrelevant or be mistaken. For these reasons, generalization, or what I call the move to generality, has been viewed as suspect.

In this Article, I argue that an exclusive focus on particularity is problematic for feminist legal theory. While generalization poses a real danger, focus only on particularity and failure to make the conceptual link to generality limits the development of a richer and more textured feminist theory and practice. In this sense, the Article resonates with and develops the work of feminist legal theorists and others working within the pragmatic legal tradition who have explored the importance of context, articulated the need for a self-reflective woman-centered stance that simultaneously moves beyond women's experiences, and identified the interrelationship between the particular and the general.³³

As the Article will demonstrate, it is also necessary to make the link between the "particular" and the "general" because, as we honestly explore the deeply "particular" aspects of women's experience, we are faced with theoretical contradictions which force us to confront more "general" issues. However, this relationship between particularity and generality is dialectical and must be understood as an aspect of the dialectical relationship between theory and practice that I have previously described as essential to feminist legal theory.³⁴ The particular illuminates the general and the general then gives a context and depth to our understanding of particularity. Linking the particular with the general is also an effort both to acknowledge situatedness and to seek commonality.³⁵ Thus, I argue for a more detailed particularity and a more inclusive generality as important for the development of feminist legal theory and practice.

Through a detailed examination of issues posed by male battering of women, this Article demonstrates the need for feminist theory to address

Stan. L. Rev. 581 (1990) (criticizing feminist theorists relying on "gender essentialism" as silencing voices of black women).

³³ See, e.g., Katharine T. Bartlett, *Feminist Legal Methods*, 103 Harv. L. Rev. 829 (1990) (offering approach of "positionality" which incorporates situational and provisional experience into concept of truth); Martha Minow & Elizabeth V. Spelman, *In Context*, 63 S. Cal. L. Rev. 1597 (1990) (examining ways in which phrase "in context" is used to critique theories calling for increased awareness of context in social problems, and discussing particular/general relationship).

³⁴ See Schneider, *The Dialectic of Rights and Politics*, *supra* note 1.

³⁵ See comment of Jean Love, *Afterword: Transcriptions of Comments made During the Symposium on the Renaissance of Pragmatism in American Legal Thought*, held on February 23-24, 1990 at the University of Southern California Law Center, 63 S. Cal. L. Rev. 1911, 1925 (1990) (noting that pragmatism may offer link between general idealism and practical humanist solution-seeking).

both particularity and generality. Part I examines various problems in the dilemma of defining the problem of male battering of women. By raising questions about the theoretical and strategic implications of various categories of description, this Part documents the strategic necessity, at least historically, of formulation of a particular category called "battered woman"; at the same time it shows how that category is ultimately confining. Part II then considers new dilemmas posed by the crucial theoretical tension in work on woman-abuse: the victim/agent dichotomy. This Part argues that issues of battered women's responsibility for children, the societal focus on their obligation to leave the abusive relationship, and fundamental issues concerning battered women as "reasonable" reveal the complexity and instability of the victimization and agency dichotomy and are linked to larger issues of gender subordination. Both Parts I and II illuminate the need for women's experiences of battering to be described with particularity, with a greater attention to the details and complexity of women's lives, and to be linked to more general issues and to women's subordination within society. Both Parts describe the unique manner in which practice in this field informs theory and theory in turn redefines practice. Finally, Part III explores the implications for feminist theory and practice of consideration of both the particularity and generality of experience.

I

THE DILEMMA OF DEFINITION

This Part explores the theoretical and strategic implications of choices in naming the problem of male battering of women. Section A examines the meaning and utility of the phrase "battered woman," and then examines the problem of essentialism in work on battered women. Next, Section B explores the tension between the practical need to define battering as physical abuse and the theoretical need to present the full range of battering experiences as a continuum of abuse of power and control. Section C moves on to explore another aspect of definition—not battering itself, but who is doing the battering and in what context. Through a discussion of lesbian and gay male battering and elder abuse, this Section shows how feminist definitions of battering as male domination are compatible with a more general definition of battering as power and control in intimate relationships generally.

A. The Concept of "Battered Woman"

1. Terminology Surrounding Battering

One of the most notable contributions of the women's movement has been its articulation of the concept of battering. At the same time,

the recognition of "battering"—the discovery of a harm experienced by women that was previously unnamed—also described a person, a "battered woman." This term, which we now take for granted, raises critical definitional issues related to understanding the problem of battering and highlights serious strategic issues related to use of this terminology.

First, in contrast with other descriptions of harm to women, "battered woman" describes the victim and focuses on her qualities. A woman is—or is not—a "battered woman." The phrase is reductive in that it totally defines the life experience of the particular woman: a "battered woman" is nothing more than a "battered woman."

Significantly, women resist applying the term "battered woman" to themselves—even when approaching hot lines and shelters, seeking temporary restraining orders against abusers, or talking to other women.³⁶ For example, at a National Coalition Against Domestic Violence (NCADV) conference several years ago, Susan Schechter observed that in her work with battered women in shelters and in hospital emergency rooms, women who had been battered were largely reluctant to identify themselves as "battered women" and frequently rejected the application of the term to themselves.³⁷

This reluctance suggests that the term "battered woman" has a restrictive meaning—a meaning that defines a woman exclusively in terms of her battering experience. Moreover, women's reluctance also suggests that the term produces a negative image from which an individual woman may have a strong need to distance herself: a "battered woman" is someone else. This argument becomes clearer when one compares the static term "battered woman" to the phrase, "woman who has been sexually harassed," or even "sexual harassment victim," or "woman who has been raped" or even "rape victim." Despite the problematic characterization of the term "victim,"³⁸ these phrases describe a woman who has been subjected to an external harm: they focus on the problem of the harm—the batterer, the rapist—and leave the woman intact. In contrast, "battered woman" defines all that a woman is in a way that fails to communicate the range and complexity of her experiences. This term makes *her*, not the experiences that she has suffered, the problem. We reinforce this interpretation by talking about "problems of battered women," rather than focusing on and discussing male battering of women.³⁹

³⁶ See Mahoney, *supra* note 6, at 25.

³⁷ See Susan Schechter, *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement* 252 (1982); Mahoney, *supra* note 6, at 8.

³⁸ See Schneider, *Describing and Changing*, *supra* note 1, at 221 (quoting S. Schechter, *supra* note 37, at 252).

³⁹ See Christine Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. Chi. Legal F. 23 (using phrase "male battering of

Advocates echo this concern by suggesting a more accurate, less totalizing description: "a woman who has (or had) a relationship with a battering man."⁴⁰ Consider the difference in meaning that this phrase conveys. Many women experience relationships with controlling men.⁴¹ Accordingly, to use the term "women who have had relationships with controlling men" accurately covers a large number of women. This alternative terminology describes the woman as a survivor of a relationship with a controlling man, rather than defining the totality of a woman by the behavior of the man with whom she has a relationship. Much recent work on battering emphasizes women's survival skills and resources and characterizes battered women as survivors, not victims.

The totalizing impact of the term "battered woman" may also be grounded in negative social stereotypes that accompany the description of battering. Public experience with the meaning of the term "battered woman" has been shaped by association with the concept of "battered woman syndrome" in criminal trials involving battered women who have fought against their abusers. In many such cases, experts have testified that there is a "battered woman syndrome" that has been commonly understood to define battered women as suffering from a kind of helplessness which makes them unable to leave. Thus, the term "battered woman" conjures up images of helplessness and defeat rather than survival and resistance. Neither the term itself, then, nor the social meaning of the term derived from practice, describe the complexity of battered women's experiences.

2. *Battered Women and Essentialism*

Just as the term "battered woman" is a static, inaccurate account of the many life experiences of a woman who has been battered, so too is the notion that there exists one paradigmatic "battered woman." Feminist legal theory has become more sensitized to the problem of essentialism—the view that there is one single "woman's" experience. Many feminist critics have written powerfully about the way in which the notion of womanhood has been described as a single uniform experience, and the way in which that has excluded a multiplicity of experiences based on race, class, ethnicity, age, sexual orientation, and other dimensions.⁴² This

women").

⁴⁰ See Mahoney, *supra* note 6, at 25.

⁴¹ Indeed, two battered women's advocates have recently written a book to assist women who are in relationships with controlling men. See Ann Jones & Susan Schechter, *When Love Goes Wrong* (1992).

⁴² See, e.g., E. Spelman, *supra* note 32, at ix (arguing that notion of generic "woman" "obscures the heterogeneity of women and cuts off examination of the significance of such heterogeneity for feminist theory and political activity"); Kimberle Crenshaw, *Race, Gender and Violence Against Women: Convergences, Divergences and Other Black Feminist Conun-*

problem of essentialism is one of the reasons why the term "battered woman" is so problematic.⁴³

It is crucial that our theoretical framework be expanded, and traps of essentialist thinking avoided, for in practice battered women are not all similarly situated. The variety of pressures shaping the battered woman's experience are often linked to the specific dynamics of the community in which the abuse occurs. Thus, efforts to aid battered women must be tailored to meet their differing needs.

One popular stereotypical misconception concerning the problem of woman-abuse is that most women who are battered are poor and/or women of color.⁴⁴ To the contrary, battering appears to cut across class, racial, and ethnic lines.⁴⁵ At the same time, within the battered women's movement, work on battering has been largely shaped by the experience and understanding of white women. Recently, however, battered women's advocates and women of color have done considerable work in expanding definitions and perspectives.⁴⁶

drums — *Stan. L. Rev.* — (forthcoming, manuscript on file with the New York University Law Review); Christine E. Rasche, *Minority Women and Domestic Violence: The Unique Dilemmas of Battered Women of Color*, 4 *J. Contemp. Crim. Just.* 150 (1986) (examining gap in research on domestic violence which does not address special problems which racial, ethnic or cultural minority women encounter when dealing with abuse from their partners); Beth Richie, *Battered Black Women: A Challenge for the Black Community*, 16 *The Black Scholar* 40 (March/April 1985) (discussing battering by examining battered minority women's perspectives).

⁴³ See Harris, *supra* note 32.

⁴⁴ See Crenshaw, *supra* note 42, at 1258-59.

⁴⁵ *Id.* However, Kimberle Crenshaw raises an interesting point regarding the lack of reliable statistical evidence about the incidence of battering across race and class lines, thereby challenging the assumption that battering is not predominantly a problem of the poor and people of color. "No reliable statistics bear out [the] claim . . . that it is equally a problem across races and classes [S]tatistics that do address the issue suggest that there is a greater frequency of violence among the working class and poor which, in turn, translates to overall rates that are higher for minorities who are disproportionately poor." *Id.* at 1259 n.60.

Crenshaw's argument is extremely provocative because of its focus not on the issue of battering as existing across classes and races, but rather on why feminist scholars feel compelled to assert this claim, why it is so crucial in the discourse surrounding battering to assert continually that battering happens to people "like us." She concludes that such tactics, although obviously useful in raising the consciousness of the white community, reinforce the "otherness" of women of color. See *id.* at 1260. This assertion acts not to encourage the exploration of the incidence of domestic abuse in communities of color, but rather as an obstacle that must be surmounted before focusing resources on the battering that occurs in white and upper- and middle-class homes. See *id.* at 1260-61. The bottom line is that a significant gap exists in the discourse and literature about battering in communities of color.

⁴⁶ A serious dearth of information exists concerning battering and women of color, but activists and scholars are beginning to point out this deficiency and raise issues specific to the intersection of these concerns. See generally Jo-Ellen Asbury, *African-American Women in Violent Relationships: An Exploration of Cultural Differences*, in *Violence in the Black Family* 89 (Robert L. Hampton ed., 1987) (describing "experiences of African-American women in violent relationships from an Afrocentric perspective"); Soraya M. Coley & Joyce O. Beckett,

Kimberle Crenshaw, for example, has discussed how women of color in violent relationships are doubly affected by the subordination of both their race and gender.⁴⁷ The intersection of racism and sexism exacerbates many problems commonly faced by women in a battering relationship. For example, the racial bias inherent in the housing market and the disparities between black and white women's earning power increase the difficulties confronting a woman of color attempting to leave a battering relationship.⁴⁸ A worker in a shelter serving a predominantly black population reported that nearly eighty-five percent of her clients returned to the battering relationship because of the difficulties posed by finding housing and employment.⁴⁹ Crenshaw suggests that although violence is a common issue among women, such violence usually occurs within a context that varies according to the race, class, and other social

Black Battered Women: A Review of Empirical Literature, 66 *J. of Counseling and Dev.* 266 (Feb. 1988) (reviewing literature available on "black battered women"); Soraya M. Coley & Joyce O. Beckett, *Black Battered Women: Practice Issues, Social Casework*, 69 *J. Contemp. Soc. Work* 483 (1988) (addressing how black battered women "may have unique needs in regard to community outreach, shelter services, shelter environment, shelter policies, staff training and counseling"); Crenshaw, *supra* note 42 (addressing perspective of battered women of color); Rasche, *supra* note 42 (same); Richie, *supra* note 42 (same).

The authors of *Violence in the Lives of Latina Women* write that the "absence of information about Latina women reflects the triple burden of discrimination under which we function in this society . . ." Angela Ginorio & Jane Reno, *Violence in the Lives of Latina Women, Working Together to Prevent Sexual and Domestic Abuse 1* (1985). Nilda Rimonte has emphasized the relationship within the Asian community between the resistance to reporting domestic violence and commonly held attitudes toward family honor. See Crenshaw, *supra* note 42, at 29 (citing Nilda Rimonte, *Domestic Violence Against Pacific-Asians, Making Waves* 328 (1989)); Nilda Rimonte, *Cultural Sanction of Violence Against Women in the Pacific-Asian Community*, — *Stan. L. Rev.* — (forthcoming, manuscript on file with the New York University Law Review).

In *Black Battered Women: Practice Issues*, the authors report that a search of the psychological and sociological abstracts from 1967 to 1987 garnered only four citations that mentioned black battered women. Coley & Beckett, *supra*, at 483. Their Article begins a discussion of how the particular circumstances of the black community may make the information and services about battering modeled on white women's experiences inappropriate. Black women may analyze their experience of physical abuse differently, focusing on a race perspective which attempts to understand the battering of the "displaced aggression of the black male." *Id.* at 486. Richie's research finds a similar analysis predominant among a group of battered minority women she observed. Richie, *supra* note 42, at 42.

Although this outlook challenges the traditional framework of gender subordination, it is absolutely critical that this point of view be understood, for it affects how women identify their experience, what services they utilize to address the problem, and what services they would use if available. Women of color may believe that the means to ending their abuse is to end racial oppression, not gender subordination. The battered women's movement as it has been constructed may not speak to their experiences at all.

⁴⁷ See Crenshaw, *supra* note 42, at 1245-49; see also Sharon Allard, *Rethinking Battered Women Syndrome: 1* *UCLA Women's L. J.* 191, 196-200 (1991) (asserting that black women must overcome stereotypes about both race and gender).

⁴⁸ See Crenshaw, *supra* note 42, at 1245-46.

⁴⁹ See *id.*

characteristics of the woman.⁵⁰ The model of battering we construct, in emphasizing the power dynamics of gender subordination, must be tempered with a recognition of the other forces which shape the battering relationship.

Besides the difficulties of finding housing and employment, institutional racism and its impact on communities of color is felt acutely by the battered woman who locates her experiences not only as an abused individual but as an abused person who is a member of an abused community. Crenshaw documents a search for specific statistics about battering and race which leads her to conclude that pressure to minimize or suppress the problem of domestic violence in the African-American community may reflect a desire to maintain community integrity and to discourage the perception of black men as uncontrollably violent.⁵¹ Beth Richie voices similar concerns about the already existing level of negative perceptions about the black community.⁵² Richie argues that battered black women are often caught in the "trap called loyalty."⁵³ In such a climate, "[d]isclosure is so easily confused with treason!"⁵⁴ Furthermore, for a community that has experienced violence at the hands of the criminal justice system, it is deeply problematic to turn now to this same system "as a vehicle for protection and problem resolution."⁵⁵ Angela Harris suggests that black women are also likely to view the criminal justice system with suspicion because of its historical tendency to "ignore violence against [black] women while perpetrating it against [black] men."⁵⁶ As one counselor reported, "Not only do we fear that *we* will be mistreated by the institutions, but that our men will be also. We want the violence in our homes to stop but we do not want to contribute in any way to the unjust treatment of our race or ethnic community."⁵⁷

The particular community in which abuse occurs often shapes women's reactions. For example, counselors who work within the Asian community note a general reluctance to report battering.⁵⁸ This reluctance, they posit, partly reflects an imperative to avoid bringing shame on the family.⁵⁹ Counselors who work within Latino communities report

⁵⁰ See *id.*

⁵¹ See *id.* at 1256-57.

⁵² See Richie, *supra* note 42, at 40.

⁵³ *Id.* at 41.

⁵⁴ *Id.*

⁵⁵ *Id.* at 43.

⁵⁶ Harris, *supra* note 32, at 601 (footnote omitted).

⁵⁷ Rasche, *supra* note 42, at 160 (quoting M. Garcia, *Double Jeopardy: Battered Women of Color, 11 Wives Tales: A Newsletter About Ending Violence Against Women in the Home* 1, 1-2 (1985)).

⁵⁸ See Rimonte, *supra* note 46, at 1313-15.

⁵⁹ See *id.* at 1317-19.

that a similar concern about focusing shame on the family contributes to the tendency to keep the problem a private, internal one.⁶⁰

The plight of battered immigrant women tragically dramatizes how the context in which abuse occurs affects the woman's options. Constrained not only by their gender, but by their illegal status, battered immigrant women are subject to even more power wielded by their husbands. The Marriage Fraud Amendments of the 1986 Immigration Act reinforced the structural dependence of the immigrant wife by requiring that she wait two years before being granted permanent residency, and that both spouses file jointly.⁶¹ The potential for abuse is all too obvious. In one marriage, the woman, a Chinese immigrant, reported that her husband beat her, threatening, "You do exactly what I say, or I'll call immigration."⁶² A counselor recounted the experience of another woman "who has been hospitalized . . . but she keeps coming back to him because he promises he will file for her He holds that green card over her head."⁶³ Although the amendments to the Act have provided a waiver for women in situations of abuse,⁶⁴ the waiver presupposes the ability of the woman to seek help and to acquire all the necessary documentation.

B. *Battering as Physical Abuse*

Thinking about definitional problems in the term "battered woman" implicates the issue of the definition of battering. Many feminists have noted that the terms that we use—whether "domestic violence," "family violence," "wife-beating," "woman-abuse," "battering," "battered woman," or "male battering of women"—carry different meanings and accordingly define the problem differently.⁶⁵ The definitions of battering

⁶⁰ See A. Ginorio & J. Reno, *supra* note 46, at 198-99.

⁶¹ See Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639, § 216, 100 Stat. 3537, 3538 (1986).

⁶² Crenshaw, *supra* note 42, at 1247 n.21 (citing Mail-Order Brides Marry Pain to Get Green Cards, Wash. Times, Apr. 16, 1991, at E1).

⁶³ *Id.* at 1248 n.28.

⁶⁴ The Immigration Technical Corrections Act of 1991, Pub. L. No. 102-232, § 302, 105 Stat. 1733, 1745 (1991).

⁶⁵ See, e.g., Elizabeth Kelly, How Women Define Their Experiences of Violence, in *Feminist Perspectives*, *supra* note 18, at 130 (stressing importance of language in defining and shaping our conceptions of violent acts); Littleton, *supra* note 39, at 27 n.18 (observing that denial of sexism has replaced terms but has not solved problem); Laurie Woods, *Litigation on Behalf of Battered Women*, 5 *Women's Rts. L. Rep.* 7, 8 (1978) (discussing terminology problem).

Laurie Woods has suggested that:

The naming of the problem [of men beating women] . . . reflects one's view of the causes of the problem, and it restricts one's perception of the nature of the problem. None of the terms currently used to name the problem are satisfactory. The violence is not confined to acts by husbands against wives. Women who are not married may also be subjected to violence by the men in their lives so terms like wife-abuse and wife-assault are

that social scientists and battered women's activists traditionally have adopted focus on physical abuse.⁶⁶ A battered woman is a woman who is hit or hurt repeatedly, or against whom weapons are used.⁶⁷ Definitions of battering may involve the amount or type of hitting or intensity of hitting. It may link hitting with rape or other forms of sexual abuse or other types of violence.⁶⁸

Feminists' theoretical work on battered women traditionally stresses male domination within the marital relationship and concepts of male ownership of women in marriage as the basis of woman abuse.⁶⁹ Yet in the early articulation of the experience of battered women and the translation of that experience into a legal concept, emphasizing the physical dimension of the abuse was critically important because society was more willing to redress real, physical hurt.⁷⁰ Moreover, physical harm was an easier route to establishing and legitimating the notion that women were the subjects of abuse and that physical battering was something particular, serious, and unique that happened to women.⁷¹ Definitions of what

under-inclusive. The terms woman-abuse, woman-assault and woman-battering all focus on the woman and ignore the man, who is, after all, the problem.

Woods, *supra*, at 8. More recently, Christine Littleton has observed:

Both the traditional and the quasi-egalitarian labels seem to me to miss the point. First, wives are battered as members of the class of women; wife battering is therefore gender related in a way that is different from occasional violence against men. Second . . . treating battering as 'the problem' of the person who is battered (whether she is called woman, wife or spouse) obscures the responsibility of the batterer. Why isn't battery considered "the problem" of violent husbands?

Littleton, *supra* note 39, at 27 n.18.

⁶⁶ See, e.g., *Feminist Perspectives*, *supra* note 18, at 12 (defining "wife abuse" as use of physical force by cohabitating partner); Daniel G. Saunders, *Wife Abuse, Husband Abuse or Mutual Combat? A Feminist Perspective on the Empirical Findings*, in *Feminist Perspectives*, *supra* note 18, at 94 (defining term "battered woman" to include women who are subjected to all forms of *physical* force by their intimate partners who intend to hurt them) (emphasis added).

⁶⁷ See, e.g., Angela Browne, *When Battered Women Kill* 13 (1987) (distinguishing and defining terms "battering," "violence," "abuse," and "assault").

⁶⁸ See Saunders, *supra* note 66, at 94 (documenting range of severity from slaps to beating to use of weapons).

⁶⁹ Feminists defined violence committed by a husband against his wife through the examination of the power structure within their relationship. Because society believes men to be the "power carriers" of the couple, "wife abuse" was accepted as a means of subordination. See Michele Bograd, *Feminist Perspectives on Wife Abuse: An Introduction*, in *Feminist Perspectives*, *supra* note 18, at 14. Feminists have also argued that "wife abuse" is related to the belief that women are legally bound to their husbands. See *id.* at 14-15; see also Under the Rule of Thumb, *supra* note 20, at 1-3 (linking origin of wife abuse to advent of marriage, whereby women became property of, and were subjugated to, husbands).

⁷⁰ Although sensitive to the range of physical and psychological abuse present in battering relationships, advocates historically focused on physical violence because it affects qualitative changes in intimate relationships and amplifies the impact of psychological abuse.

⁷¹ Even Lenore Walker, one of the leading psychologists in the field, places emphasis on the repetition of violence in the relationship by classifying a woman as a "battered woman"

has become known as "woman abuse" or "battering" thus focused largely on the type, extent, and frequency of physical abuse.

Significantly, over the last ten years, the focus on abuse as primarily physical has shifted and broadened.⁷² This broader description has several dimensions but is premised primarily on an understanding of coercive behavior and power and control, rather than "number of hits," as the critical definition of battering relationships.⁷³ As the battered women's movement continues to develop, practical experience is blurring the distinction between physical abuse and other aspects of the battering relationship. First, with exploration of the widespread experience of marital rape, observers have realized that physical abuse and sexual abuse within intimate relationships overlap significantly.⁷⁴ Second, expe-

only if the couple has gone through the "battering cycle" at least twice. See Mahoney, *supra* note 6, at 28-29 (citing Lenore Walker, *The Battered Woman* xv (1979)).

⁷² See generally S. Schechter, *supra* note 37, at 29-52 (identifying wife beating as controlling behavior that perpetuates the imbalance of power between men and women). See also R. Emerson Dobash & Russell P. Dobash, *Research as Social Action: The Struggle for Battered Women*, in *Feminist Perspectives*, *supra* note 18, at 58-59 (discussing failure of many studies on wife battering which examine only level and quantity of violence without considering its historical and social context).

⁷³ See Bell Hooks, *Talking Back: Thinking Feminist, Thinking Black* 87-88 (1989) (arguing that terms such as "battered" reflect biases because they call attention to only one type of violence in intimate relationships by emphasizing continuous physical assaults); Adams, *supra* note 18, at 191 (noting that power and control are fundamental issues where controlling behavior creates and maintains imbalance between batterer and battered and arguing that physical contact is not necessary since intimidating acts can achieve same results); Kelly, *supra* note 65, at 114-15 (advocating understanding sexual violence as a continuum because "distinctions between 'sexual' and 'physical' assaults are . . . false and/or arbitrary"); Susan Schechter, *Building Bridges Between Activists, Professionals, and Researchers*, in *Feminist Perspectives*, *supra* note 18, at 310 (criticizing tendency to define battering relationships by numerical criteria, thereby ignoring power dynamics of relationships); Kersti Yllo, *Political and Methodological Debates in Wife Abuse Research*, in *Feminist Perspectives*, *supra* note 18, at 28 (recognizing that power and control can constitute another element of battering and degradation within a physically violent relationship).

The experiences of a woman in one of Liz Kelly's studies illustrate the inadequacy of the word "battering" to describe abusive behavior which encompassed more than severe physical violence: "What he did wasn't exactly battering but it was *the threat*. I remember one night I spent the whole night in a state of terror, nothing less than terror *all night* And that was worse to me than getting whacked . . ." Kelly, *supra* note 65, at 120 (emphasis in original). Kelly's research demonstrated the pervasiveness of the tendency to identify battering by the quantifiability and frequency of *physical* acts, particularly by those experiencing the abuse. Many of the women refused to define their experiences as domestic violence as long as the abuse remained infrequent. See *id.* at 127.

⁷⁴ See David Finkelhor & Kersti Yllo, *License to Rape: Sexual Abuse of Wives* 22-24 (1987) (concluding that marital rape or sexual abuse was another form of abuse that characterized battering relationships); Diana E.H. Russell, *Rape in Marriage* 90-91 (1990) (revealing that in about one-half of marriages where wives are abused, wife beating is a major problem, in one-fourth wife rape is principal form of abuse, and in one-fifth wife rape and battering are of equal magnitude); Elizabeth A. Stanko, *Intimate Intrusions: Women's Experience of Male Violence* 51 (1985) (concluding that sexual intimidation and violence toward women goes hand

rience with battering men who have entered groups that treat their battering suggests that even men whose physically abusive behavior has been modified and who have stopped hitting do not stop extreme harassment, threatening behavior, and obsessive forms of control over women.⁷⁵ Third, the expansion of understandings of battering outside the heterosexual context—of battering within lesbian and gay male communities and battering of elderly persons—also has redefined our understanding of battering as something which is not unique to male/female relations but is part of larger problems of power and control within intimate relationships generally.⁷⁶

This revised definition of battering thus sees physical, mental, and emotional abuse as intimately and integrally connected to issues of power and control. Defining battering as part of an ongoing continuum is essential, but has complex ramifications. A more expansive definition is critical, because it is more inclusive and accurate to the experience of women in relationships with battering men; this definition recognizes that physical abuse does not exist in isolation. However, although this revised definition of battering more fully describes the range of experiences of women who are beaten, it complicates the argument that women who have been physically battered are a distinct group with unique problems. In other words, by collapsing the distinction between physical abuse and other forms of abuse within intimate relationships, battered women become like everyone else. Since all relationships involve issues of power and control, practical difficulties thus arise in differentiating battered women's experiences from women's experiences within heterosexual relationships, or, as we have expanded our understanding,⁷⁷ within relationships generally. Judges, jurors, and legislators, finally convinced that battered women indeed have suffered serious harm, may

in hand with physical intimidation and violence).

Diana Russell's study found that physical violence employed by the husbands often ensured future submission by their wives, such that although the act of intercourse would not be called rape by the woman, it was forced intercourse accomplished through the threat of force. One woman described her husband's actions: "[H]e used his arms and body to pin me down so I couldn't move. With all of the violence that had occurred before—him beating me all the time—I was afraid of him when he told me I better not move." D. Russell, *supra*, at 94. The typologies Russell provides are useful for they encompass the continuum of violence, both sexual and physical, which constitute the different forms of abuse that occur in violent relationships, instead of setting up artificial distinctions between rape and battering.

⁷⁵ See Ellen Pence & Melanie Shepard, *Integrating Feminist Theory and Practice: The Challenge of the Battered Women's Movement*, in *Feminist Perspectives*, *supra* note 18, at 282. For an overview of the possibilities and pitfalls of programs which seek to treat men who batter, see Adams, *supra* note 18, at 177-95.

⁷⁶ For a discussion of abuse within lesbian and gay male communities and elder abuse, see text and accompanying notes 84-118 *infra*. This Article does not discuss child abuse because the focus here is on abuse in intimate adult relationships.

⁷⁷ See text accompanying notes 84-108 *infra* (discussing lesbian and gay male battering).

begin to question their understanding of distinctness once the definition of battering becomes more nebulous and more universal.

Given the power of judicial, legislative, and juror denial as a barrier to recognition of battering as a serious issue, this revised definition of battering poses serious strategic problems. The concept of battering articulated as a special category of experience has played an enormously important role in gaining public recognition and legal rights. At the same time, establishing and legitimating battering as a serious problem has been incredibly difficult because battering forces jurors in battered women self-defense cases, judges in restraining order cases, legislators, and the general public to challenge images of the family as a haven in a heartless world. The threat that battering poses to traditional notions of the family is even more profound when battering is redefined as an issue of power and control, rather than physical abuse. Individuals who have to confront their own feelings of family can distance themselves more easily when the issue is physical abuse, rather than personal domination.

Thus, the paradox is that redefining battering as an issue of power and control contradicts the feminist impulse and strategic effort initially necessary to establish woman-battering as a unique phenomenon justifying special legal recognition. Rather than making battering special, this redefinition makes battering normal and usual, and places it on a continuum with a range of ordinary, if troubling, aspects of intimate relationships. While this understanding feels more accurate to feminist *theoretical* conceptions of battering, it is risky because it heightens the likelihood of *practical* problems—denial of and distancing from battering generally. Once we redefine the experience of battering to one of power and control, we must confront the complexity and messiness of pain and love that are characteristic of all intimate relationships. The particularity that makes battering legally cognizable thus limits the generality that reflects a more accurate vision of battering relationships.

C. *Battering as "Sexism"*

Traditionally, feminist work on battering identified battering as a problem of sexism, of male domination within heterosexual relationships, shaped by the institution of marriage.⁷⁸ Battering was viewed as a natural extension of notions of women as male property within the marital relationship. Over the last several years, the discovery and exploration of the problem of lesbian-battering and battering within gay male relationships has redefined this view of battering as unique to heterosexual relationships.⁷⁹ Recent exploration of the problem of elder abuse has further

⁷⁸ See Bograd, *supra* note 69, at 14.

⁷⁹ The heterosexist assumption implicit in the term "battered woman" becomes clear when

expanded feminists' understanding of battering. Finally, several years ago, studies purportedly showing that men were battered as frequently as women attracted considerable attention, although these studies have been discredited.⁸⁰ Expanded understandings of abuse have caused feminists to re-examine the theoretical framework of the battering relationship.

one considers that the term applies equally to a woman who is beaten within a heterosexual relationship as well as a woman who is in a lesbian relationship.

⁸⁰ In the 1970s and 1980s, a number of social scientists conducted studies which supposedly demonstrated that women batter men as often or even more frequently than men batter women, or that deviant behavior on the part of the battered woman provokes the abuse from her husband or boyfriend. See, e.g., Richard J. Gelles, *The Violent Home: A Study of Physical Aggression Between Husbands and Wives* (1972) (theorizing that physical violence between family members is standard pattern in American families); Mildred D. Pagelow, *Woman-Battering: Victims and Their Experience* 20 (1981) (citing several additional studies); Murray A. Straus et al., *Behind Closed Doors: Violence in the American Family* 38-41 (1980) (concluding that statistics on husband-beating are slightly higher than those for wife-beating); John E. Snell et al., *The Wifebeater's Wife*, *Archives of General Psychiatry*, August 1964, at 107-12 (studying role of wives who take battering husbands to court); Diane Steinmetz, *The Battered Husband Syndrome*, 2 *Victimology* 499-509 (1977-78) (examining phenomenon of husband battering and suggesting reasons why men do not report their victimization and stay in abusive situations); Murray A. Straus, *A General Systems Theory Approach to a Theory of Violence between Family Members*, XII-3 *Soc. Sci. Info.* 105-25 (1973) (formulating theory accounting for presence of violence as continuing element in nuclear families).

Many of the social scientists who conducted these studies adhered to family systems theory, which holds that all members of the family system are responsible for dysfunction within the family, and that therapeutic, not legal, approaches are the most effective in dealing with family violence. These studies reflect an underlying cultural bias against women who are abused by their husbands. Instead of viewing battering as a quest for control on the part of the abuser, family systems theorists implicitly blame the woman for the abuse by characterizing the abuse as a breakdown in communication that is at least partially the victim's fault. See Mahoney, *supra* note 6, at 47 n.215. Underlying this perception is an assumption that the family dysfunction is a phenomenon that occurs in a vacuum, apart from societal forces. Viewing the woman as a victim at best, and a party to her own abuse at worst, discounts cultural male superiority.

A host of studies by feminist and other theorists indicates that studies conducted by these social scientists are fundamentally flawed, and that violence within the traditional family is systematically and overwhelmingly directed against women by men. See S. Schechter, *supra* note 37, at 209-16 (criticizing failure of social studies to contextualize battering relationships); Richard A. Stordeur & Richard Stille, *Ending Mens' Violence Against Their Partners: One Road to Peace* 17-36 (1989) (examining theories of wife abuse and developing critical perspective from which to approach counseling for men who batter); Michele Bograd, *Family Systems Approaches to Wife Battering: A Feminist Critique*, 54 *Am. J. Orthopsychiatry* 558-68 (1984) (critically examining systemic formulations of husband-to-wife violence and discussing contradictions of conjoint therapy with battered women and abusive men); *Confronting Domestic Violence*, *supra* note 20, at 10 (reporting that in New Jersey, wives or girlfriends were victims in 85% of all domestic violence offenses); Elizabeth Pleck et al., *The Battered Data Syndrome: A Comment on Steinmetz's Article*, 2 *Victimology* 680-83 (1977-1978) (criticizing misinterpreted findings reported in Steinmetz's discussion of empirical data on battered husbands); Saunders, *supra* note 66, at 94-100; Evan Stark & Anne E. Flitcraft, *Women and Children at Risk: A Feminist Perspective on Child Abuse*, 18 *Int'l J. Health Services* 98-100 (1988) (offering statistical evidence that men are more likely than women to batter their children, especially men who batter their wives).

Including a broader range of experiences in which abuse takes place complicates the traditional heterosexist framework of woman-abuse. First, this inclusion redefines battering as an issue of power and control generally, rather than an issue of particular or even exclusive *male* power and control. Individual psychological perspectives⁸¹ and sociological perspectives that explicitly focus on "family violence"⁸² contrast with feminist perspectives that focus on male domination. Accordingly, feminist activists and academics have criticized psychological and sociological perspectives as inadequate.⁸³ Redefinition to include other-battering

⁸¹ In general, this work is done by psychodynamic researchers who focus on personality traits, defense systems, mental disability or illness and psychopathology. See Adams, *supra* note 18, at 178-88. Psychodynamic researchers have labeled battered women as "masochistic, paranoid and depressed," while the same researchers have called batterers "passive-dependent and infantile," and lacking in impulse control. Another approach in psychology, the interaction model, looks to violence in the families from which batterers and abused women emerge, as well as to learned social behavior. See Snell et al., *supra* note 80, at 111.

Feminists have criticized these psychological approaches. First, feminists argue, the psychological focus on pathological behavior suggests that battering is abnormal—a suggestion which is countered by the overwhelming statistical prevalence of battering. See *Confronting Domestic Violence*, *supra* note 20, at 2-13. Second, psychological explanations have been applied differentially to men and women: labels and explanations tend to excuse or mitigate the behavior of the batterer, whereas women are stigmatized. See Adams, *supra* note 18, at 194; Ptacek, *supra* note 18, at 152-53. Third, focusing on the issue as mental illness ignores the element of systemic power imbalances. Feminists have been less critical of a link to pathology than to the lack of emphasis on a social and cultural context which is patriarchal. Challenging the traditional interpretive frameworks used by psychologists, feminists have drawn analogies between battered women and other victims of terrorism. See S. Schechter, *supra* note 37, at 210; Lenore E. Walker, *The Battered Woman's Syndrome* (1984); Bograd, *supra* note 80, at 558 (Family Systems approaches to wife battering can introduce subtle biases against women); Dobash & Dobash, *supra* note 72, at 65-67; *A Feminist Examination of Family Systems Models of Violence Against Women in the Family*, in *Women and Family Therapy* (Marianne Ault-Riche ed., 1986).

⁸² Sociologists study the social structures which lead to wife abuse. Typical studies are David Finkelhor et al., *The Dark Side of Families: Current Family Violence Research* (1983); D. Russell, *supra* note 74, at 96; *The Social Causes of Husband-Wife Violence* (Murray Straus & Gerald T. Hotaling eds., 1980); Murray Straus et al., *Behind Closed Doors: Violence in the American Family* (1980). Although sexism within the structure of society is an element of these sociological theories, the analyses are more "gender neutral" than feminist. Sexism is but one element of abuse; to the extent that abuse has been attributed to family dysfunction, abuse is not seen as arising from a male dominated structure.

Feminists respond to sociologists with the same complaint they direct toward psychologists: that is, the abstraction of violence from its sociohistorical context allows violence to be viewed as deviant and not commonplace in society. As a result, sociologists foster notions such as the safety and security of the home. See Elizabeth Stanko, *Fear of Crime and the Myth of the Safe Home: A Feminist Critique of Criminology*, in *Feminist Perspectives*, *supra* note 18, at 75. As with the critique of psychology, feminists challenge the methods and models of study traditionally employed by sociologists.

⁸³ See Bograd, *supra* note 18, at 11 (defining wife abuse as "use of physical force by a man against his intimate cohabiting partner"); Wini Breines & Linda Gordon, *The New Scholarship on Family Violence*, 8 *Signs: J. Women in Culture and Soc.* 490, 508-16 (1983) (aggregating problems under rubrics like "family violence" obscures central differences; violence must be placed in entire social context). See generally R. Emerson Dobash & Russell P. Dobash,

relationships is also problematic since it suggests and reinforces an individual psychological, "anger-management" perspective on battering, instead of an explicitly feminist perspective. The remainder of this section describes how the acknowledgment of lesbian, gay male, and elder abuse affects definitions of battering in theory and in practice.

1. *Lesbian and Gay Male Battering*

The mainstream domestic violence movement has long operated from a heterosexist perspective.⁸⁴ Ironically, although lesbian activists were among the first to work with battered women,⁸⁵ perception of the existence of a battering problem within the lesbian community itself came much later.⁸⁶ Gay men, who have not been widely involved in the domestic violence movement,⁸⁷ have had even more difficulty acknowledging these problems. As a result, little has been written about lesbian battering, and even less has been written about gay male battering.⁸⁸ Several reasons exist that might explain this dearth of theoretical exploration. Understandably, the lesbian and gay male community has been reluctant to dispel its internal utopian myths by admitting that lesbians and gay men are sometimes in as much danger at home as they are in a

Violence Against Wives: A Case Against the Patriarchy (1979).

Feminists not only criticize, but also suggest such reformulations of methods of research as emphasizing women-centered values rather than neutral study; asking why men use force against their wives rather than why women stay; using qualitative methods of data collection, especially in early stages (employing the data to assist and not to blame victims); and recognizing that there is a relational, or collaborative, rather than a traditionally "objective," interaction which exists between the researcher and the respondent. See Bograd, *supra* note 69, at 20-25.

⁸⁴ See Minnesota Coalition for Battered Women, Lesbian Battering Intervention Project, *Confronting Lesbian Battering* 5 [hereinafter *Confronting Lesbian Battering*]; Ruthann Robson, *Lavender Bruises: Intra-Lesbian Violence, Law and Lesbian Legal Theory*, 20 *Golden Gate U. L. Rev.* 567, 584 (1990) ("Domestic violence in feminist legal theory is not necessarily applicable to lesbian legal theory because feminist legal theory is often based upon heterosexist assumptions.").

⁸⁵ See National Coalition Against Domestic Violence Lesbian Task Force, *Naming the Violence: Speaking Out About Lesbian Battering* 10 (Kerry Lobel ed. 1986) [hereinafter *Naming the Violence*]; see also S. Schechter, *supra* note 37, at 47.

⁸⁶ See Nancy Hammond, *Lesbian Victims and the Reluctance to Identify Abuse*, in *Naming the Violence*, *supra* note 85, at 190 (discussing battered and abused lesbians and their fear and hesitation in acknowledging violence they have suffered).

⁸⁷ See *Confronting Lesbian Battering*, *supra* note 84, at 45 (suggesting that silence of lesbians and gay men can be partially attributed to society's homophobic attitudes). While lesbian women became involved in the battered women's cause to aid heterosexual women, gay men had no similar cause. See S. Schechter, *supra* note 37, at 56-57.

⁸⁸ For discussions of these topics, see generally *Confronting Lesbian Battering*, *supra* note 84; David Island & Patrick Letellier, *Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence* (1991); *Naming the Violence*, *supra* note 85; Mahoney, *supra* note 6, at 49-53; Robson, *supra* note 84; Amy Edgington, *Anyone But Me*, *Gay Community News*, July 16, 1989 at 55-58.

homophobic world.⁸⁹ In addition, the problem of lesbian and gay male battering disturbingly highlights the capacity for all relationships to descend into violence.⁹⁰

The traditional model explaining domestic violence as a way of maintaining patriarchal control within the nuclear family unit is thrown into question when the violent partner is a woman, or the victim is a man. Seeing battering as men using violence to control women, or women and children, within the dominant nuclear family structure fails to explain satisfactorily the incidence of lesbian and gay male battering, which appears to occur at rates approximately equal to violence in heterosexual relationships.⁹¹ Although some legal theorists have attempted to explain lesbian or gay male battering by comparing the violence to heterosexual role-playing,⁹² lesbian and gay male relationships do not fit neatly into traditional gender roles.⁹³ In fact, some have argued that the characterization of lesbian violence as part of "butch-femme" dual roleplay may represent an effort within the lesbian community to avoid the reality of violence even in "feminist" lesbian relationships.⁹⁴ Moreover, rigid gender roles by themselves may not even be able to explain heterosexual battering. Lenore Walker has suggested that it is when women attempt to assert power against these roles that the violence erupts. The attempt to transcend those roles and threaten the superiority of the more powerful partner, and not the presence of rigid gender roles in and of themselves, may provide the catalyst for heterosexual battering.⁹⁵

The phenomenon of lesbian battering relationships, then, compels an expansion of the traditional concept of battering to account for this particular experience. Ruthann Robson, for example, has suggested that "'dominance' is a hetero-relational concept that may not be applicable to lesbian relationships"⁹⁶ In seeking to develop a lesbian legal theory

⁸⁹ See Barbara Hart, *Lesbian Battering: An Examination*, in *Naming the Violence*, supra note 85, at 194.

⁹⁰ See Robson, supra note 84, at 591 (observing that violence occurs in all relationships).

⁹¹ *Incidence of Battering in Lesbian Relationships*, LBIP Report, Summer 1991, at 2 (*Lesbian Battering Intervention Project*) (citing Jane Garcia, *The Cost of Escaping Domestic Violence*, L.A. Times, May 6, 1991, at E2).

⁹² See, e.g., Robson, supra note 84, at 585 (citing Catherine MacKinnon, *Towards a Feminist Theory of the State* 178 (1989)).

⁹³ See *id.* at 571-72 (noting that courts fail to make this distinction).

⁹⁴ See Mahoney, supra note 6, at 52-53 (citing Ann Strach et al., *Lesbian Abuse: The Process of the Lesbian Abuse Issues Network (LAIN)*, in *Naming the Violence*, supra note 85, at 88-89 ("Some women initially believed that only 'bar dykes' engaged in violence, that feminist lesbians were not involved in battering relationships and that only couples strictly locked into butch/femme roles ha[d] a problem with violence.")).

⁹⁵ Mahoney, supra note 6, at 29 (quoting Lenore E. Walker, *The Battered Woman* xi (1979)).

⁹⁶ Robson, supra note 84, at 574.

of battering, she rejects heterosexist formulations embedded in mainstream feminist legal theories.⁹⁷ Instead, Robson insists that the legal community must recognize lesbian relationships and protect battered lesbians, while realizing that lesbian relationships cannot be neatly analogized to heterosexual relationships. This analogy, instead of protecting battered lesbians, only serves to victimize them further by obliterating their distinct sexuality and community.⁹⁸

A number of theorists seek to resolve the inconsistencies between the traditional heterosexual paradigm and the realities of lesbian and gay male battering relationships by focusing on the use of power and control in all intimate relationships as the root of relational violence in general.⁹⁹ The assertion of male power within the historical medium of the heterosexual family is therefore only a single, although the most common, manifestation of the use of violence to control partners in intimate relationships.

Problems in recognizing and describing lesbian battering may stem from the many important differences between lesbian and heterosexual battering relationships.¹⁰⁰ Lesbians are, by and large, excluded from the legal system;¹⁰¹ therefore, issues such as custody, shared property rights and protection from the batterer must be approached without any assumption that the courts will be available to help a survivor of lesbian battering. The complexity of feelings that lesbian victims of battering have toward their batterers is more evident in the first person literature that does exist.¹⁰² Perhaps lesbians are freer to tell the complexity of

⁹⁷ See *id.* at 585 (arguing that "simplistic equation of lesbian sadomasochism with heterosexual domestic violence does not elucidate the issues involved in intra-lesbian violence").

⁹⁸ See Mahoney, *supra* note 6, at 50 (discussing how legal system is unresponsive to even fundamental lesbian legal claims such as marriage and child custody). The prevalence of homophobia in society and the courts has deterred many lesbians from seeking legal redress, even in cases involving criminal conduct. In many states, lesbians are unable to pursue types of relief available to heterosexuals, such as restraining orders. See *id.*

⁹⁹ For example, Barbara Hart examines the roots of lesbian relational violence. She attributes lesbian battering to the violent, patriarchal culture in which we are all socialized. Though lesbian batterers are not men, they seek the power and control that patriarchs have historically enjoyed over family life. Hart asserts that battering lesbians use violence and the threat of violence because it is an extremely potent way of controlling the family environment. See Hart, *supra* note 89, at 173, 174-75; see also Mahoney, *supra* note 6, at 53-54 (noting interplay of domination and subordination involved in battering); A Theoretical Model of Lesbian Battering, in *Confronting Lesbian Battering*, *supra* note 84, at 68 (describing behavior used to coerce, degrade or humiliate).

¹⁰⁰ See *Confronting Lesbian Battering*, *supra* note 84, at 41 (contrasting lesbian and heterosexual battering); see also Mahoney, *supra* note 6, at 49-53 (comparing experiences of lesbian and heterosexual battering victims).

¹⁰¹ See Mahoney, *supra* note 6, at 50 (noting that homophobia often deters battered lesbians from invoking legal system, and that restraining orders are not available against same-sex partners in some states).

¹⁰² See *id.* at 52.

their stories.¹⁰³ Another difference is that the batterer is often physically smaller than the abused partner. Often, theorists and volunteers make the mistake of assuming that the violence is mutual because both women claim to have been abused.¹⁰⁴ In addition, telephoning a house where violence often occurs is more dangerous in a lesbian relationship than in a heterosexual relationship because volunteers cannot assume that the woman's voice on the line is that of the victim or that the male voice belongs to the aggressor.¹⁰⁵

Without expanding our definitions of battering beyond the traditional heterosexual framework, effective ways of reaching out to and assisting battered lesbians and gay men in the community will be impossible.¹⁰⁶ Women working in the shelter movement already worry about "lesbian baiting."¹⁰⁷ Lesbians who are battered are sometimes denied shelter outright; at times, they choose not to seek shelter because of homophobic attitudes that proliferate among shelter workers or other shelter residents.¹⁰⁸ Understanding the experiences of lesbian and gay male abuse is an important first step toward a comprehensive redefinition of battering relationships.

2. *Elder Abuse*

Elder abuse has come under public scrutiny as another manifestation of family violence. As with lesbian and homosexual battering, elder abuse is not grounded in men beating women, so this problem, too, challenges the idea that sexism defines battering. The director of a family shelter in Illinois remarked that "[w]hen everyone began looking at domestic violence, they started with child abuse, then woman abuse. The third phase is elder abuse."¹⁰⁹

The literature examining the problem of elder abuse remains limited, as theoretical models explaining this form of abuse continue to de-

¹⁰³ See *id.*

¹⁰⁴ See generally Hart, *supra* note 89, at 180-81 (noting that some lesbian batterers assert that they are "controlled and victimized" by their partners). Even if both partners abuse each other repeatedly and a pattern evolves, it is not considered battering "unless the effect of the violent conduct is to render the perpetrator more powerful and controlling in relation to the recipient." *Id.* at 183.

¹⁰⁵ See *Confronting Lesbian Battering*, *supra* note 84, at 45.

¹⁰⁶ See Mahoney, *supra* note 6, at 351 (citing Nancy Hammond, *Lesbian Victims and the Reluctance to Identify Abuse*, in *Naming the Violence*, *supra* note 85, at 190, 195-96) (discussing homophobia as factor in lesbian victims' reluctance to seek help, and in many lesbian shelter workers' reluctance openly to offer services geared toward lesbian community).

¹⁰⁷ See *Confronting Lesbian Battering*, *supra* note 84, at 3, 10.

¹⁰⁸ See Janice Irvine, *Lesbian Battering: The Search for Shelter*, *Gay Community News*, Jan. 14, 1984, at 25 (discussing escalation of homophobia in shelter movement).

¹⁰⁹ Suzanne McNamara, *Elderly Abuse*, *Chi. Trib.*, May 19, 1991, at 3.

velop.¹¹⁰ As with woman-abuse, studies are complicated by the fact that elder abuse is vastly underreported. A recent House of Representatives Committee on Aging Report estimated that five percent of the elderly population experiences abuse, but only 1 in 8 cases are reported.¹¹¹ In one survey, only fourteen percent of the reports of abuse were made by the elderly person—an indication both of the reluctance to implicate family members, who in the majority of the cases of elder abuse are the perpetrators, and also of the social isolation of the elderly.¹¹²

One of the major issues in the literature examining elder abuse has been defining the term “abuse.” Unlike the tendency in examinations of woman battering to limit consideration to purely physical violence, models of elder abuse almost always adopt a continuum which includes physical, psychological, and financial abuse.¹¹³ Abuse of the elderly thus ranges from the extremely violent cases of beating and murder reported in the news, to the more commonplace occurrences of threatening behavior, confining the elderly to a chair or a room, depriving the person of care, or forcing medicine or food on the person.¹¹⁴

¹¹⁰ Researchers have developed a number of models to explain elder abuse. The “situational model,” with its focus on situational stress and structural factors as aggravating forces which increase the likelihood of abuse directed at the person associated with the stress, has many adherents. See generally Linda R. Phillips, *Theoretical Explanations of Elder Abuse: Competing Hypotheses and Unresolved Issues*, in *Elder Abuse: Conflict in the Family* 197, 198-202 (Karl A. Pillemer & Rosalie S. Wolf eds., 1986) (discussing situational model and noting its wide acceptance). Researchers have borrowed heavily from already existing knowledge about other forms of family violence without considering the ways in which the particular dynamic between the elder and the caregiver, who are often parent and child, may cause differences. See *id.* at 202.

Another conceptual model, termed social exchange theory, looks at power imbalances in social exchange that facilitate abuse relationships. See *id.* at 202-07. Although the critical element in such an examination would seem to be the abused elder, at least one study has shown that the relevant factor was not the dependence of the elder, but rather the dependence of the abuser caregiver. Abuse can be viewed then, as an expression of “when the abuser feels powerless and impotent and seeks to compensate for the lack of control or power loss with the resources available.” *Id.* at 205. Other researchers have noted the importance of behavior practiced within the particular family and the impact that negative attitudes toward the elderly may exert upon tendencies toward abuse. See *Abuse of the Elderly: Issues and Annotated Bibliography* 18-19 (Benjamin Schlesinger & Rachel Schlesinger eds., 1988).

¹¹¹ See Audrey S. Garfield, *Elder Abuse and the States’ Adult Protective Services Response: Time for a Change in California*, 42 *Hastings L.J.* 61, 61 (1991) (citing *Elder Abuse: A Decade of Shame and Inaction*, Hearing Before the Subcomm. on Health and Long-Term Care of the House Select Comm. on Aging, 101st Cong., 2d Sess. 3 (1990)).

¹¹² As one social worker commented, “[o]ften the abusing child may be the only access that the elderly person has to the outside world.” McNamara, *supra* note 109, at 3.

¹¹³ See Terry T. Fulmer & Terrence A. O’Malley, *Inadequate Care of the Elderly: A Health Care Perspective on Abuse and Neglect* 18-19 (1987) (summarizing six studies and how they define abuse).

¹¹⁴ The author of one study examined the interactions between the elderly and the caregiver and concluded that the behavior engaged in by *both* parties reflected a struggle over control. See Suzanne K. Steinmetz, *Duty-Bound: Elder Abuse and Family Care* 18 (1988). The author

Elder abuse, like all intrafamily violence, is a complex phenomenon which results from the interaction of many factors. It often develops around a relationship where the elderly person is bound to the caregiver by physical dependency, and the caregiver is emotionally and financially dependent on the aged person.¹¹⁵ The abuse that occurs in these situations is closely related to the internal stress endemic to such family relationships. Elder abuse bears particular resemblance to woman-abuse, because both involve a long-term intimate relationship between two adults. In addition, elder abuse sometimes is the continuation of woman-abuse.¹¹⁶ Studies report that the majority of the victims of elder abuse are women.¹¹⁷

Examining lesbian and gay male battering and elder abuse shows that the themes of power and control extend beyond heterosexual relationships, in particular, to intimate relationships in general. It is critical that feminist activists and academics continue to affirm the *particular* experience of woman-abuse, shaped by understandings of male domination in heterosexual relationships, while including in our understanding of abuse the ways in which power and control operate in all intimate

noted that caregivers engaged in controlling and abusive behavior, which ranged from ignoring the elder to psychological and physical abuse. See *id.* However, she also observed that elders engaged in verbal abuse, crying, pouting, refusing food or medicine, and physical abuse directed at the caregiver. See *id.* Interestingly, a considerable proportion of the elderly participants engaged in physical violence which in some cases may have reflected a life-long cycle of violence between parent and child. See *id.* at 187-88. Steinmetz observed a correlation between the use of physical violence by elders and their dependency on the caregiver; those elderly who used violence were more likely to require significantly more health, financial, and social assistance. See *id.* at 188. Caregivers engaging in psychologically abusive behavior were more likely to have cared for the elder for longer and to have held more responsibility for performing essential tasks. See *id.* at 194.

Although Steinmetz advises that this trend needs to be examined on larger, representative samples, since not all her findings were statistically significant, her work supports the proposition that abuse can be viewed as the range of "positive and negative methods [used to] attempt to gain or maintain control." *Id.* at 199. While Steinmetz's study comes uncomfortably close to suggesting that both the elder and the abusing caregiver are victims, the work is important for its recognition of the complex web of dependency and resentment which binds the aged person and the caregiver together and which reveals itself in a range of abusive behavior.

¹¹⁵ See *Help for the Terrified Elderly*, N.Y. Times, Apr. 2, 1991, at A18 (editorializing as to how abused and abuser are bonded by money, emotional co-dependency, and guilt).

¹¹⁶ See Phillips, *supra* note 110, at 199; Diane Brady, *A Hidden Terror: Abuse of the Elderly is Increasing*, MacLean's, Aug. 19, 1991, at 36 (stating that for many victims elder abuse is simply continuation of marital abuse).

¹¹⁷ See Jordan I. Kosberg, *Preventing Elder Abuse: Identification of High Risk Factors Prior to Placement Decisions*, 28 *Gerontologist* 43, 45 (1988) (suggesting that women are more likely to be abused in part because there are more older women than men and because they are less likely to resist); see also Mary Joy Quinn & Swan K. Tomita, *Elder Abuse and Neglect: Causes, Diagnosis and Intervention Strategies* 28-31 (1986) (citing two studies in which at least 80% of elders abused were women). But see Karl Pillemer & David Finkelhor, *The Prevalence of Elder Abuse: A Random Sample Survey*, 28 *Gerontologist* 51, 55 (1988) (finding roughly equal percentages of abuse of elderly men and women).

relationships. The situations of lesbian-abuse, abuse between gay men, and elder abuse provide us with opportunities to deepen our theoretical understanding and broaden our practical experience with the problem of abuse.

The term "battered woman" suggests that the experiences of all battered women are the same. Yet, there is no single "battered woman"; many battered women of color and battered women's advocates of color have begun to write and talk about their experiences;¹¹⁸ lesbian-battering has come to the fore. There may be significant differences in the ways in which abuse occurs and is experienced based on the sex of the parties, as well as race, class, age, and many other factors. However, as we understand violence in "particular" situations, we also uncover more "general" themes. We need not deny the particular urgency of the feminist critique in order to recognize a broader range of situations in which battering occurs. It is this recognition of both particularity and generality which must reshape our theoretical framework.

II

NEW DILEMMAS POSED BY THE CONTINUING TENSION BETWEEN VICTIMIZATION AND AGENCY

In earlier work, I have identified tension between the false dichotomies of victimization and agency as a major theme in work on woman-abuse. In this Part of the Article, I explore new dilemmas in work on woman-abuse that manifest the continuing tension between victimization and agency as examples of the larger problem of particularity and generality.

Historically, neither the public nor scholars had a category for, or social and legal definition of, battered women. Recently, historians such as Linda Gordon have helped to unearth the history of battered women. Gordon details the experiences of battered women who, through interactions with social workers in the early twentieth century, began to define an affirmative entitlement not to be hit.¹¹⁹ Nonetheless, the predominant view, which continues to the present, sees battered women as alien, as horrible.¹²⁰ The alternative image of the battered woman as victim, developed by the battered women's movement itself, created new problems as well. We now alternate between visions of the battered woman as

¹¹⁸ See notes 42-60 and accompanying text *supra*; note 185 and accompanying text *infra*.

¹¹⁹ See generally Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (1989) (explaining family violence in light of history of power relationships both within and outside to the family).

¹²⁰ See *id.* at 279-81, 286 (detailing instances where battered women rather than their assailants were seen as outcasts).

agent—as cause or provocateur of the battering—and the battered woman as helpless victim. And we go back and forth between these two images without any real public engagement on the problems underlying battering. However, portraying women solely as victims or solely as agents is neither accurate nor adequate to explain the complex realities of women's lives.

As I suggested in my earlier article, *Describing and Changing*, victimization has become an increasingly powerful and pervasive theme in the women's movement and in feminist legal theory.¹²¹ Because women often are victims, this perspective on women's experience can be important and useful, particularly on issues concerning violence against women. Several years ago, Susan Schechter emphasized the dangers of an analysis of battered women premised on victimization, rather than oppression. She suggested that the characterization of battered women as victims has been viewed as posing a complicated political problem for the battered women's movement:

[T]he focus on victimization helps to blur the insight that the struggle for battered women's rights is linked to the more general fight for women's liberation. When activists view battering as victimization rather than as an aspect of oppression they have a tendency to see individual problems rather than collective ones.¹²²

In addition, she observed that "victim" may be a label that battered women reject because "it fails to capture their complexity and strength."¹²³ At the same time, the notion of women's agency is equally limited without a social context of victimization. Agency carries with it assumptions of liberal visions of autonomy, individual action, individual control, and mobility that are also inadequate and incomplete.

Victimization and agency are false dichotomies; both fail to take account of women's daily experiences of oppression, struggle, and resistance within ongoing relationships. Explanation of battered women's experiences that documents this complex and multi-faceted process is crucial and precisely what I have expressed by the phrase "describe, but allow for change."¹²⁴ Our task as feminist legal theorists must be to give

¹²¹ See Schneider, *Describing and Changing*, supra note 1, at 201-04 (suggesting that admission of expert testimony helps portray battered woman as victim).

¹²² Susan Schechter, supra note 37, at 252.

¹²³ Id. Significantly, Kristin Bumiller has documented similar reluctance on the part of individuals to identify as victims in the context of employment discrimination. See Kristin Bumiller, *The Civil Rights Society: The Social Construction of Victims* 88-93 (1988) (reviewing several case studies in which victims of discrimination sought a more positive formulation of their situation).

¹²⁴ Schneider, *Describing and Changing*, supra note 1, at 222; see also Mahoney, supra note 6 (exploration of issues of oppression, struggle, and resistance); Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. Cal. L.

voice to, describe and name legal problems for women—describing them in detail and in context, and translating them to legal and public arenas of change. We must do this in a way that is not only accurate to the realities of women's experience but that also takes into account the complexity of these experiences and allows for change.

In recent years, the battered women's movement has begun to grapple with this victim/agent dichotomy. For example, one now sees the term "battered woman survivor" used frequently to replace the term "battered woman"; along with this rhetorical change comes a developing literature concerning "battered woman survivors."¹²⁵ Many resource materials on battered women now emphasize the enormous human strengths and capacities of battered women, who struggle to survive, protect themselves, and keep their families functioning.¹²⁶ Yet because the definition of who a battered woman is remains narrow, battered women continue to suffer from being described as victims and irrational agents.

This Part explores in detail three manifestations of the victim/agent dichotomy as examples of the larger tension between particularity and generality. Section A examines the problems that women with children face when they are battered. The law views battered mothers as primarily responsible for harms to which their children are exposed. Yet, in custody battles, battered women may lose custody of their children because they are portrayed as victims. Thus, work on woman-abuse must recognize the particular problem for battered women shaped by the more general context of motherhood. Section B examines why women who have been battered are required to leave these relationships in order to gain the protection of the law and looks at the particular experiences of woman-abuse in the more general context of unequal, complex and constrained relationships between women and men. Finally, Section C turns to new examples of public resistance to the notion that women who have been battered may be "reasonable." Here the particular problems that women who have been battered face must be understood in the more general context of deep social stereotypes concerning women's reasonableness. These three situations highlight the need to adapt our theory to new developments in practice, and the difficulty in integrating theoretical complexity into practice.

A. Mothers Who Are Battered

Recent scholarship and activism have begun to focus on the

Rev. 1283 (1992) (same).

¹²⁵ See, e.g., Edward W. Gondolf & Ellen R. Fisher, *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* (1988); L. Hoff, *supra* note 21.

¹²⁶ See, e.g., Mahoney, *supra* note 6, at 40.

problems that women who are battered face when they are mothers.¹²⁷ Recent studies have suggested that there is a high correlation between male battering of women and child abuse.¹²⁸ This phenomenon compounds the harm from which battered women suffer, for where a child is beaten by her father or even just exposed to violence, the mother is likely to be held responsible for any harm that the child suffers.¹²⁹ The Lisa Steinberg case, recent legislative reform efforts to hold responsible mothers who are battered, and problems that battered women may face with custody dramatize these tensions.

The first example is the situation posed by the Lisa Steinberg case which attracted such attention in New York, perhaps because "we are fascinated by that which we recognize."¹³⁰ During Joel Steinberg's trial for the murder of his adopted daughter, Lisa, considerable controversy arose among feminists concerning whether Hedda Nussbaum should share responsibility for Lisa's death. In particular, Susan Brownmiller and others charged that despite Hedda Nussbaum's experiences as a severely battered woman, she should not have been treated as a victim and absolved of all liability.¹³¹ Instead, she, along with Joel, should have been prosecuted. For feminists to identify with Hedda Nussbaum was

¹²⁷ See generally Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 *Vand. L. Rev.* 1041 (1991) (discussing failure of courts to consider domestic violence in custody decisions).

¹²⁸ See Nancy S. Erickson, *Battered Mothers of Battered Children: Using our Knowledge of Battered Women to Defend Them Against Charges of Failure to Act*, 1A *Current Perspectives in Psychological, Legal and Ethical Issues*, 197, 200 (1991) (noting one study finding that in over half of the cases the woman-batterer also battered the children and another study where 45% of children investigated for abuse or neglect had mothers who were battered). The relationship between violence directed at women and violence directed at children within the family setting is described in Richard J. Gelles, 8 *The Myth of Battered Husbands and New Facts About Family Violence* 65-72 (1979). See also Jean G. Moore, *Yo-Yo Children: Victims of Matrimonial Violence*, 54 *Child Welfare* 558-61 (1975) (describing effect of pattern of violence on children); Evan Stark & Anne H. Flitcraft, *Child Abuse and the Battering of Women: Are They Related and How?*, paper presented at the National Family Violence Conference, Durham, N.H. (1984); Straus et al., *supra* note 80, at 115 (asserting that "violent husbands and wives are also likely to be child abusing parents").

¹²⁹ See John Davidson, *It's Always the Mother*, *Mirabella*, May 1991, at 167 (discussing tendency to hold women accountable when men in their lives beat or kill their children); Georgia Network Against Domestic Violence, *Abused Mothers of Abused Children: A Perspective*, in *Network News*, Jan. 1990, at 1 (recognizing expansion of sanctions to non-abusing parent as response to public outcry against child abuse); Suzanne Groisser, *Battered Women & Their Battered Children: Criminal and Civil Allegations of the Woman's Failure to Protect* 3 (May 14, 1991) (unpublished manuscript on file with the New York University Law Review) (noting that more women than men are charged with failure to protect).

¹³⁰ Sam Ehrlich, *Lisa, Hedda and Joel: The Steinberg Murder Case* 7 (1989) (quoting Gloria Steinem).

¹³¹ See Susan Brownmiller, *Hedda Nussbaum: Hardly a Heroine*, *N.Y. Times*, Feb. 2, 1989, at A25.

"simplistic and alarming," Brownmiller charged.¹³² She wrote in *The New York Times*:

Systematic battering combined with misguided, though culturally inculcated, notions of love is not a sufficient excuse to exonerate Hedda Nussbaum from her share of culpability in Lisa Steinberg's death. . . . When decent, honorable women insist that a piece of Hedda Nussbaum resides in us all, they give the Joel Steinbergs of this world far too much credit and far too much power. More insidiously, they perpetuate the specious notion that women are doomed to be victims of the abnormal psychology of love at all cost.¹³³

The Steinberg case is one illustration of the link between woman abuse and child abuse that is now being brought to public attention. These situations raise critical questions as to whether the abused woman has any legal responsibility and should therefore face criminal or civil charges of failure to protect, child abuse, or child neglect. Many battered women's advocates were outraged by Brownmiller's reactions to Hedda Nussbaum. Organizing letter-writing campaigns and public statements in response, battered women's groups suggested that Brownmiller was falling into the historic role of "blaming the victim."¹³⁴

In this circumstance, the "victim" description seems most accurate to the battered woman's experience: the woman is trapped by a man who is abusing both her and her children. Yet, the woman's role as mother makes characterizing her as victim far more problematic. We expect mothers to transcend their victimization, to act on behalf of their children regardless of their own situations.¹³⁵ A host of recent legislation charging battered women with criminal liability for failure to protect children, or for abuse or neglect, reflects this view.¹³⁶

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See Minow, *supra* note 22, at 1681.

¹³⁵ The issue of a battered mother's failure to protect has arisen recently in the public eye not only in the Lisa Steinberg case but in other cases as well. Robbi Boutwell, in Houston, Texas, pled guilty to manslaughter for the death of her son. See Groisser, *supra* note 129, at 30 (citing Barbara Whitaker, *Finding Levels of Victimization: Nussbaum, Cortez Abuse Cases Viewed Differently*, *Newsday*, Jan. 8, 1989). Boutwell never struck her child, and she was beaten and had her life threatened when she told her batterer, Chris Zuliani, not to bother the child. See Davidson, *supra* note 129, at 167. Similarly, Abigail Cortez, a battered woman, was indicted for second-degree murder, second-degree manslaughter, and endangering the welfare of a child, in the same year and city as Hedda Nussbaum. See Whitaker, *supra*, at 30; see also Coalition of Battered Women's Advocates, *Position Paper on Child Welfare* 467, Nov. 1988 [hereinafter *Position Paper*] ("It has been our experience that far too few child abusers are actually prosecuted and convicted by the courts while too many battered women face child neglect charges.").

¹³⁶ See Anne T. Johnson, *Criminal Liability for Parents Who Fail to Protect*, 5 *Law & Ineq.* J. 359, 366-67 (1987) (listing relevant statutes); Groisser, *supra* note 129, at 26-29 (discussing criminal statutes and statutory defenses to crime of failure to protect).

Recently, battered mothers whose children are abused by their batterers have been prosecuted for child abuse or neglect, and even for manslaughter, on the theory that they have failed to protect the child from the batterer.¹³⁷ Recent legislative efforts to criminalize parental inaction have blurred the distinction between child neglect and child abuse: thirty-five of the forty-eight states criminalizing child abuse include omissions as well as commissions in their definitions of the statutory offense, and eight states expressly define the crime of failure to protect.¹³⁸ In Mississippi, for example, a person may be found guilty of child *abuse* who "omits the performance of any duty."¹³⁹ Most of the statutes frame the crime in terms of criminal child endangerment. A Hawaii statute, for example, provides that, "A person commits the offense of endangering the welfare of a minor . . . by violating or interfering with any legal duty of care or protection owed to a minor."¹⁴⁰ Similarly, in Maine, endangering the welfare of a child includes knowingly endangering "the child's health, safety or mental welfare by violating a duty of care or protection,"¹⁴¹ and in Montana a person may be found guilty of child endangerment for "violating a duty of care, protection or support."¹⁴²

A survey of reported cases reveals the same pattern of battered women who are prosecuted for child abuse where their batterer is the abuser of the child.¹⁴³ Statutory affirmative defenses for battered women

¹³⁷ See note 135 *supra*.

¹³⁸ Those states which do not criminalize omissions are Alabama, the District of Columbia, Georgia, Illinois, Louisiana, Maryland, Massachusetts, New Jersey, Oregon, South Dakota, Tennessee, West Virginia and Wisconsin. See Johnson, *supra* note 136, at 366.

¹³⁹ *Id.* at 366 n.51 (citing Miss. Code Ann. § 97-5-39 (Supp. 1986)).

¹⁴⁰ *Id.* (citing Haw. Rev. Stat. § 709-904 (1985)).

¹⁴¹ *Id.* (citing Me. Rev. Stat. Ann. tit. 17-A, § 554 (West 1983)).

¹⁴² *Id.* (citing Mont. Code Ann. § 45-5-662 (1986)); see also *id.* (citing N.H. Rev. Stat. Ann. § 639:3 (1986) (crime of endangering welfare of child is "purposely violating a duty of care, protection, or support"); Ohio Rev. Code Ann. § 2919.22 (Anderson Supp. 1987) (endangering welfare of child includes, "violating a duty of care, protection or support"); 18 Pa. Cons. Stat. Ann. § 4304 (1983) (same); Wyo. Stat. § 6-4-403 (Supp. 1987) (person commits crime of endangerment by "violating a duty of care, protection or support"))).

See generally Groisser, *supra* note 129, at 3 (noting irony that, while parental culpability has been expanded effectively to include maternal victims of violent abuse, responsibility of state child service agencies has been constricted by United States Supreme Court's decision in *Deshaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189 (1989)).

¹⁴³ See *Phelps v. State*, 439 So. 2d 727 (Ala. Ct. App. 1983) (affirming conviction for child abuse where battered mother failed to prevent death of son at hands of child's stepfather); *State v. Williams*, 670 P.2d 122 (N.M. App. Ct. 1983) (convicting battered wife of child abuse for failure to prevent beating of daughter); *Commonwealth v. Cardwell*, 515 A.2d 311 (Pa. Super. 1986) (finding battered woman's failure to take adequate steps to prevent abuse of her child violative of duty of care); *Commonwealth v. Howard*, 402 A.2d 674 (Pa. Super. 1979) (affirming conviction for involuntary manslaughter where battered mother failed to prevent death of daughter at hands of mother's boyfriend); *State v. Williquette*, 385 N.W.2d 145 (Wis. 1986) (holding abuse statute applicable to parent who knowingly permits another person to abuse parent's own child); see also Erickson, *supra* note 128, at 197.

accused of child abuse exist in a number of states.¹⁴⁴ These statutes allow a woman to escape liability by explaining that she feared any action taken to stop the abuse would cause physical harm to her or cause more danger for the child.¹⁴⁵

There are many cases involving battered women with children who are abused that are just being uncovered. In many reported cases involving abuse or neglect, opinions do not even mention the fact that a woman has been battered,¹⁴⁶ so that it is difficult to come up with an exhaustive list of cases involving battered women, despite available statistical evidence that batterers are more likely to abuse children in the household.¹⁴⁷

Courts may not know that a woman is battered, or consider that fact to be relevant in deciding whether to find her culpable for failure to protect. But battering also can work against battered women. In a New Mexico case, for example, the appellate court upheld a child abuse conviction of a woman who was severely battered and pregnant for failing to protect her child from her husband's violence.¹⁴⁸ The court reasoned that the woman's experience of battering supported her conviction because the battering evidenced her awareness of the dangerousness of her husband.¹⁴⁹ Similarly, in *Phelps v. State*,¹⁵⁰ Gayle Weaver Phelps was charged with child abuse when her husband killed her toddler son by striking him in the abdomen. The court held that because Ms. Phelps knew of her husband's violence—because her husband beat her—she should have prevented the child's death and, therefore, was liable for the abuse.¹⁵¹

¹⁴⁴ See Johnson, *supra* note 136, at 367 n.54 (citing Iowa Code Ann. § 726.6.1.c (West Supp. 1986); Minn. Stat. § 609.378 (1984); Okla. Stat. Ann. tit. 21, § 852.1.a (Supp. 1990)).

¹⁴⁵ See Groisser, *supra* note 129, at 28 (discussing statutory defenses to crime of failure to protect); see also Erickson, *supra* note 128, at 207-10 (discussing inability to prevent harm and increased risk to child).

¹⁴⁶ See Erickson, *supra* note 128, at 200 & 214 n.26 (noting lack of defenses in New York and California cases concerning failure to act to prevent child abuse); Groisser, *supra* note 129, at 59 ("There are very few recorded civil appellate cases nationwide that identify the mother as a battered woman.").

¹⁴⁷ See Stark & Flitcraft, *supra* note 80, at 98-100 (offering statistical evidence that men are more likely than women to batter their children, especially men who batter their wives). See generally Position Paper, *supra* note 135, at 467 ("It has been our experience that far too few child abusers are actually prosecuted and convicted by the courts; while too many battered women face child neglect charges.").

¹⁴⁸ See *State v. Williams*, 670 P.2d 122 (N.M. Ct. App. 1983).

¹⁴⁹ See *id.* at 124 (discussing defendant's knowledge of husband's drug use and violent nature).

¹⁵⁰ 439 So. 2d 727 (Ala. Crim. App. 1983).

¹⁵¹ See Groisser, *supra* note 129, at 40. For other cases in which battered women are convicted of child abuse for failure to act, see *Commonwealth v. Cardwell*, 515 A.2d 211 (Pa. Super. Ct. 1986) (battered woman convicted of endangering her child for "knowingly" failing to act to protect child); *Commonwealth v. Howard*, 402 A.2d 674, 678 (Pa. Super. Ct. 1979)

What are the appropriate boundaries of responsibility for a mother who is battered? We are just beginning to explore the implications of motherhood for feminist legal theory and practice generally.¹⁵² Many battered women report that they were only able to mobilize to change their lives when their children began to be abused.¹⁵³ Responsibility for children does heighten the need for safety, but we do not want to place that responsibility exclusively on the mother. It is difficult to determine the contours of maternal responsibility in a culture that blames mothers for all problems relating to children and absolves fathers of all responsibility. Mothers who are abused face enormous pressures to protect themselves and their children and to maintain their families even under terrible and constrained circumstances. These situations pose enormous conflicts—conflicts that cannot be honestly confronted unless we move beyond the dichotomous characterizations of victim and agent. “good” mother versus “bad” mother. We must struggle to understand the complicated daily pressures that operate on battered women with children and make these pressures visible.

The tension between victimization and agency emerges in another context involving battered women and their children—child custody. Although custody has always been an important issue for battered women due to their fear of losing their children, it has become increasingly urgent since many battering men fight the issuance of restraining orders by initiating divorce and custody proceedings against battered women.¹⁵⁴ Battered women have good reasons to take this threat seriously.

Recent scholarship has suggested that women who depart from

(upholding mother's conviction for voluntary manslaughter where she failed to protect her child from battering by mother's boyfriend); Groisser, *supra* note 129, at 42-45 & n.122 (citing *State v. Williquette*, 385 N.W.2d 145, 149-50 (Wis. 1986) (judicially expanding legislative enactment which did not expressly include omissions to hold Terri Williquette liable for child abuse for failure to protect her children).

¹⁵² See generally Marie Ashe and Naomi Cahn, *Child Abuse: A Problem for Feminist Theory*, 2 *Tex. J. Women and L.* (forthcoming 1993) (arguing that feminist theory needs to address role of “bad mothers” in child abuse); Martha Fineman, *Images of Mothers in Poverty Discourses*, 2 *Duke L.J.* 274 (1991) (discussing concept of motherhood as it relates to traditional theories of poverty and family); Martha Fineman, *The Neutered Mother*, 46 *U. Miami L. Rev.* 653 (1992) (discussing evolution of symbolic aspects of “Mother” in modern family law reform and arguing for further reforms); Stephanie M. Wildman, *The Power of Women*, 2 *Yale J.L. & Feminism* 435 (1990) (reviewing Catharine MacKinnon, *Toward a Feminist Theory of the State*).

¹⁵³ See Lee Bowker et al., *On the Relationship Between Wife Beating and Child Abuse, in Feminist Perspectives*, *supra* note 18, at 164; Snell et al., *supra* note 80, at 108.

¹⁵⁴ See Mahoney, *supra* note 6, at 44 n.198 (citing example of woman who allowed her temporary restraining order to expire because her husband offered to drop threat of custody suit); see also Finn & Colson, *supra* note 20, at 1 (noting that initiation of criminal proceedings may expose victim to immediate risk of further violence).

traditional stereotypes of "perfect" mothers, including those who are sexually active, lesbian, or battered, are penalized in custody decisions.¹⁵⁵ In battering contexts, a double standard exists as to fitness of fathers or mothers. If a father seeks custody at all, a judge will often take the attempt at custody as *prima facie* evidence of paternal fitness. In these cases, violence against the women is held not to be of importance.¹⁵⁶ In some extreme cases, even the murder of the mother by the father has been held to be irrelevant for purposes of determining parental fitness.¹⁵⁷

Incredibly, though battering fathers are usually not penalized because of their attacks, battered mothers often are. The standard stereotype of battered women as helpless victims works against women in the context of a custody proceeding.¹⁵⁸ This stereotype blames women for not leaving, instead of the men for perpetuating the abuse; it also characterizes "batteredness" as somehow deviant, abnormal, extremely different from what all women experience.¹⁵⁹

Cultural images of battered women as helpless have only exacerbated the problem in the custody arena. The "dysfunctional portrait of battered women"¹⁶⁰ that has emerged in cases involving battered women on trial for the killing of their assailant, has created a legal stereotype. When a battered woman decides to identify her abuse in the context of a custody suit, courtroom professionals, many of them trained in family systems theory, may shunt that woman into a stereotypical category, one that characterizes her as weak, passive, victimized, and therefore unable

¹⁵⁵ For problems that women face in custody disputes generally, see Phyllis Chesler, *Mothers on Trial: The Battle for Children and Custody* (1986). For discussion of custody problems faced by women who are sexually active, see Maryland Special Joint Committee on Gender Bias in the Courts, *Gender Bias in the Courts* 35-37 (1989); Report of the New York Task Force on Women in the Courts, 15 *Fordham Urb. L.J.* 1, 105-07 (1986-1987). For discussion of how lesbian relationships adversely affect the women's attempt to gain custody of their children, see Nancy Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 *Geo. L.J.* 459, 464-68 (1990). For problems battered women face in custody proceedings, see Cahn, *supra* note 127.

¹⁵⁶ See *Glasbrenner v. Sapio*, No. A-4263-88T5 (N.J. Super. Ct. App. Div., Feb. 6, 1990), cert. denied, 584 A.2d 205 (N.J. 1990); *Mahoney*, *supra* note 6, at 45.

¹⁵⁷ See *In re H.L.T.*, 298 S.E.2d 33 (Ga. Ct. App. 1981) (ignoring manslaughter of wife by husband in making custody determination); *In re Lutgen*, 532 N.E.2d 976 (Ill. App. Ct. 1988) (murderer of mother of children awarded custody based on "best interests of the child" standard); *Bartasovich v. Mitchell*, 471 A.2d 833 (Pa. Super 1984) (father murdered mother and abused child but still received custody on appeal). But see *In re Abdullah*, 423 N.W.2d 915 (Ill. 1981) (finding premeditated murder of child's mother *prima facie* evidence of father's depravity); *Viola v. Randolph W.*, 356 S.E.2d 464, 470 (W. Va. 1987) (stating that "first degree murder of child's parent is the ultimate act of savagery to that child . . . we can conceive of few circumstances in which the termination of parental rights would be more justified").

¹⁵⁸ See Cahn, *supra* note 127, at 1055-78; *Mahoney*, *supra* note 6, at 345-46.

¹⁵⁹ See Cahn, *supra* note 127, at 8 (citing Littleton, *supra* note 39, at 37-38).

¹⁶⁰ *Mahoney*, *supra* note 6, at 46.

to properly care for her children.

However, battered women (and women in general) are put in a double bind. A woman who is strong, capable, and assertive, is bucking the common stereotype of the battered woman. For example, women have lost custody of their children because of their "propensity for violence"—what in actuality was an aggressive show of self-defense, where a mother allegedly fired a rifle at her ex-husband when he came to visit the child.¹⁶¹ A mother's act of self-defense is more likely to be understood as violent than a father's battering, so that the mother will lose custody.¹⁶²

Stories of women losing custody because of their battering experiences abound. Christine Littleton relates a story in which a woman who had gotten a temporary restraining order against her husband was attacked by him in her bedroom. She fled his attack, and the husband got custody because he claimed, and the judge believed, that the woman had abandoned her children that night.¹⁶³ Other researchers relate a case in which a woman ran away from home because her husband was chasing her with a shotgun. The woman decided to leave the children in the house as she fled into the woods since her husband had never harmed them before, and because she was in imminent danger of losing her own life. The judge granted custody to the batterer, since he was angry at the woman for leaving her children behind.¹⁶⁴

These circumstances of battered women with children, issues of battered women's responsibility for children and custody, underscore the need to move beyond the dichotomy of victimization and agency. These new developments underscore ways in which the traditional framework of victimization must be disrupted. They underscore the need to describe all the dimensions of battered women's experience without falling into the extremes of *either* victimization or agency. They also demonstrate the degree to which the particular issues which battered women face as mothers must be understood in the context of the general problems that women face in motherhood under constrained circumstances.

B. Requiring Battered Women to Leave

The immediate question for most people when they first hear about the problems of battered women is "why don't they leave?" This question reflects a tendency to want battered women to take control, to act as

¹⁶¹ See *Collins v. Collins*, 297 S.E.2d 901, 902 (W. Va. 1982).

¹⁶² See Cahn, *supra* note 127, at 1058 n.74 (discussing *Collins*).

¹⁶³ See Littleton, *supra* note 39, at 54.

¹⁶⁴ See Cahn, *supra* note 127, at 1091 (citing Lenore E. Walker & Glenace E. Edwall, Domestic Violence and Determination of Visitation and Custody in Divorce, in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence* 131 (Daniel J. Sonkin ed., 1987)).

agents and reject completely their victimization. However, many battered women cannot leave. They have no money, no child care, no employment; they are financially and emotionally dependent on the men who batter them; they think that it is better to stay with the men because of children; or they don't want to leave, because they love the men and want to maintain whatever intimacy and sense of connection they can. Many battered women report that they want the relationship to continue but the battering to stop.¹⁶⁵

Moreover, leaving provides battered women no assurance of separation or safety. The stories of battered women who have been hunted down across state lines and harassed or killed are legion.¹⁶⁶ Indeed, much abuse can be viewed as what Martha Mahoney has called "separation attack," beatings that are provoked by the woman's threat of, or actual, separation from the man.¹⁶⁷

Many commentators have noted the troubling result of the focus on why the woman does not leave.¹⁶⁸ Asking this question places responsibility on the woman, and puts her conduct under scrutiny, rather than placing the responsibility on the battering man.¹⁶⁹ Instead of asking "why doesn't the woman leave," we should ask "why do men batter," or perhaps, more significantly, "why does society tolerate men who batter?" It also assumes a false black-and-white model of human relationship, of simple right and wrong, penalizing the woman for seeking to maintain connection. Surely the contradiction and compromise involved in intimate relationships are not outside each of our own experience.

Where each of us will draw the line depends heavily on context, the nature of our human, economic, and social dependence, the existence of and relationship with children, social supports and the degree to which we perceive that there are realistic options. As described in Part I, battering results from abuse of power and control within intimate relationships; asking why battered women stay, rather than what makes batterers abuse, distances us from examining this complexity. The particularity of battered women's experience must be understood in the context of the

¹⁶⁵ See Mahoney, *supra* note 6, at 64 (citing Angela Browne, *When Battered Women Kill* (1987)).

¹⁶⁶ See, e.g., *State v. Stewart*, 763 P.2d 572 (Kan. 1988) (involving abusive husband who followed wife from Kansas to Oklahoma and threatened to kill her if she ever ran away from him again). For further discussion of this case, see Mahoney, *supra* note 6, at 85-87.

¹⁶⁷ See Mahoney, *supra* note 6, at 65-68.

¹⁶⁸ See, e.g., Littleton, *supra* note 39, at 37-38 (analyzing consequences of focusing on woman's failure to leave rather than man's violence). See generally Mahoney, *supra* note 6, at 61-65 (stating that the question "why did the woman fail to leave" is in fact assertive statement that woman did not leave, thereby diminishing any actual separations or attempts by woman to separate from her batterer).

¹⁶⁹ See Mahoney, *supra* note 6, at 61.

generality of inequality, power imbalance, and compromise in intimate relationships.

There is some sense in which people assume superhuman dimensions and become the focus of unrealistic expectations when they become victims, "battered women," claim sexual harassment, or claim discrimination generally. Because one is claiming to be harmed, to be in need of special protection, one's life and conduct become entirely open to scrutiny. Think of Anita Hill. Others who are observing and judging the situation are comparing themselves to this projected image. Requiring a battered woman to leave is a projection of a higher standard of conduct. It reflects a process of distancing oneself and one's behavior, of saying "this is not me." If instead we were able to acknowledge generality, the human connection, see what was similar with *that* woman's situation and our own experience, to understand genuinely the commonality of sexual subordination and the complexity and compromise involved in all intimate relationships, we could understand why a woman who had a relationship with a battering man might choose to remain and struggle *but still want the battering to stop*. We might be more accepting of the complex circumstances in which women who are battered find themselves, and therefore better able to devise strategies that would help.

C. *Resistance to Reasonableness*

One critical insight of women's self-defense work was the idea that there was deep gender-bias in the concept of "reasonableness."¹⁷⁰ Because self-defense is premised on the idea of reasonableness, this insight was central to the dilemma posed by self-defense claims made by women. Early work on women's self-defense argued that reasonableness was a gendered concept because only men were viewed as reasonable—women were viewed as inherently unreasonable—and that work suggested that these views had long been part of the common law.¹⁷¹ Consequently women become less likely to be able to plead self-defense successfully and

¹⁷⁰ My earlier Articles suggest a variety of reasons for this result, including: sex-stereotypical attitudes that men are reasonable and women are unreasonable/hysterical/emotional; intuitive, patriarchal attitudes held by judges and jurors that battered women are inherently crazy for taking abuse and staying in relationships; and stereotypes of women as particularly vicious and threatening for killing men with whom they are intimate. See Elizabeth M. Schneider, Equal Rights to Trial for Women: Sex-Bias in the Law of Self-Defense, 15 Harv. C.R.-C.L. L. Rev. 623, 624-30 (1980) [hereinafter Schneider, Equal Rights to Trial]; Elizabeth M. Schneider & Susan B. Jordan, Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault, 4 Women's Rts. L. Rep. 149, 151-53 (1978).

¹⁷¹ See Maguigan, *supra* note 6, at 409-13 (discussing impact of reasonableness standard on self-defense instruction to jury); Schneider, Describing and Changing, *supra* note 1, at 198; Schneider, Equal Rights to Trial, *supra* note 170, at 635-36.

have been relegated to pleas of temporary insanity or manslaughter.¹⁷² Recently, feminist scholars have examined the problems of reasonableness in other contexts.¹⁷³

The overwhelming number of cases in which courts addressed issues of women's self-defense involved battered women charged with killing men who battered them.¹⁷⁴ The primary legal issue relating to sex bias in the law of self-defense has been the issue of admissibility of expert testimony on "battered woman syndrome." A significant number of important legal victories have been won in this general area. Indeed, several cases which admitted expert testimony on battered woman syndrome, such as the New Jersey Supreme Court's 1984 decision *State v. Kelly*,¹⁷⁵ did so on the basis of an extraordinary acceptance of and insight into feminist theory. Despite my close involvement in developing the theoretical framework of those cases, I was concerned with what I perceived to be the contradictory implications of this use of expert testimony.

In *Describing and Changing*,¹⁷⁶ I argued that the battered woman syndrome perspective reflected ongoing tensions and paradoxes within women's self-defense work. Women's self-defense work had been conceived of as a way to remedy the unequal treatment of women that results from the application of male norms and standards in the criminal justice system; to assist women to speak in our own voices in the courtroom, and to describe the variety and complexity of our experience. The aim was to expand the legal options available in defending women against charges of homicide or assault beyond the traditional pleas of insanity and incapacity. Expert testimony on battered woman syndrome was developed to explain the common experiences of, and the impact of, repeated assault on battered women. The goal was to assist the jury and the court in fairly evaluating the reasonableness of the battered woman's action. The notion of expert testimony was predicated on an assumption that battered women's voices would not be understood or were not strong enough to be heard alone in the courtroom.

However, examination of the cases involving battered women under-

¹⁷² See Laura H. Martin, Ohio Joins the Majority and Allows Expert Testimony on the Battered Woman Syndrome, 6 U. Cin. L. Rev. 877, 903-04 (1992); Schneider, Equal Rights to Trial, *supra* note 170, at 638.

¹⁷³ See Leslie Bender, A Lawyer's Primer on Feminist Theory and Tort, 38 J. Legal Educ. 3, 20-25 (1988) (examining manner in which negligence law perpetuates traditional male values and perspectives); Lucinda M. Finley, A Break in the Silence: Including Women's Issues in a Torts Course, 1 Yale J.L. & Feminism 41, 57-65 (1989) (analyzing gender bias of reasonable person standard in tort cases).

¹⁷⁴ See Schneider, *Describing and Changing*, *supra* note 1, at 196 n.6.

¹⁷⁵ 478 A.2d 364 (N.J. 1984).

¹⁷⁶ Schneider, *Describing and Changing*, *supra* note 1, at 198-200 (the following five paragraphs restate the thesis of this Article and excerpt it).

scored the complexity of the task of expanding defense options for battered women. These cases revealed the tenacity of sex-stereotyping for, despite the purpose for which this legal strategy was conceived, old stereotypes of incapacity were replicated in a new form. Lawyers who submitted testimony focused on the passive, victimized aspects of battered women's experiences, their "learned helplessness," rather than explaining homicide as a woman's necessary choice to save her own life, and judges were hearing the testimony in this way. The term "syndrome" (and the psychological description of battered women that predominates in "battered woman syndrome") conjures up images of a psychological defense—a separate defense and/or an impaired mental state defense.

Judicial and public perceptions of battered woman syndrome as a form of incapacity have had problematic consequences for the defense of battered women who kill and assert self-defense. The critical defense problem is how to explain the woman's *action* as reasonable. The woman's experience as a battered woman and her inability to leave the relationship—her victimization—is the context in which that action occurs. When battered woman syndrome is presented or heard in a way that sounds like passivity or incapacity, it does not address the basic fact of the woman's action and contradicts a presentation of reasonableness. Indeed, the overall impact of the battered woman syndrome stereotype may be to limit rather than expand the legal options of women who cannot conform to these stereotypes. Judges are not likely to recognize the need for expert testimony in those cases where the woman's actions significantly depart from both the traditional "male" model of self-defense and the passive "battered woman" model.

The underlying theme throughout these expert testimony cases is the dilemma that the notion of victimization poses for feminist legal theory. The expert testimony cases suggest that a perspective like battered woman syndrome, which either emphasizes victimization or is susceptible to that characterization, raises serious problems for women in theory and practice.

As work on cases involving battered women who killed their abusers has unfolded over the last fifteen years, feminist lawyers have grappled with the dilemma of attempting to educate judges and juries about the problems of male battering of women, so that these fact finders might apply fairly the standard of reasonableness. Thus, the argument for admission of expert testimony on battering was driven by the effort to have battered women viewed as reasonable.¹⁷⁷ The development of specific

¹⁷⁷ See Maguigan, *supra* note 6, at 430 n.182 (listing appellate cases considering admission of expert testimony on battered woman syndrome for purpose of demonstrating victim's reasonableness); Schneider, *Describing and Changing*, *supra* note 1, at 201-02 (explaining purposes of expert testimony on battered woman syndrome).

psychological descriptions of “battered woman syndrome” flowed from the need to describe the experiences of women who had been battered in order to establish their perspectives as reasonable. This work was premised on the notion that the generic concept of reasonableness could be transformed by including women’s experiences.¹⁷⁸

At the same time, another tension riddled this work—the impulse to reject the general concept of reasonableness and create a separate, more particular standard. Significantly, although battered women’s advocates intended descriptions of battered women’s experiences to illuminate and expand the traditional concept of what “reasonable” means, quite the opposite effect often resulted. The more specific and distinct the expert descriptions of these experiences, encapsulated in the phrase “battered woman syndrome,” the more this testimony suggested a separate standard: the “reasonable woman” or the “reasonable battered woman.” Judges were eager to see the argument for a separate standard, even where it had not been made, because then they could reject it.¹⁷⁹ Many lawyers, some feminists and battered women’s advocates argued for a separate standard as well,¹⁸⁰ perhaps because they had given up on the idea that courts would ever accept a notion of reasonableness that would take women’s experiences and perspectives into account.

Holly Maguigan addresses the popular and widely-held perception that existing criminal law doctrine, including standards of reasonableness, cannot accommodate the self-defense claims of women who kill their abusers. Taking note of the scholarship and proposals for legislative reform in this area and acknowledging that the law of self-defense has developed largely in a field of male aggressors, Maguigan nonetheless rejects the assumption that current law ignores the context of a woman defendant’s actions. Instead, she argues that “[i]n most jurisdictions, the standard of reasonableness against which the necessity of a defendant’s act is measured explicitly includes consideration of the characteristics and history of the defendant on trial” and of her subjective perception of threatened harm.¹⁸¹ She further notes that appellate opinions “do not support the assumption that most battered women are convicted as the result of the criminal law’s definitional inability to accommodate their self-defense claims.”¹⁸² Maguigan also rejects the adoption of a “reasonable battered woman” or a “reasonable battered woman who kills” stan-

¹⁷⁸ Schneider, *Describing and Changing*, *supra* note 1, at 219 (noting that objective reasonable man standard has been criticized as reflecting male values).

¹⁷⁹ *Id.* at 198-99.

¹⁸⁰ See generally Maguigan, *supra* note 6, at 443-44 & n.n.228-30 (citing Kit Kinports, *Defending Battered Women’s Self-Defense Claims*, 67 *Or. L. Rev.* 393, 416 (1988)).

¹⁸¹ *Id.* at 385.

¹⁸² *Id.*

dard, arguing that such a standard will only be exclusionary and ignore those who are not " 'good' battered women."¹⁸³

The tension between the arguments for a single standard of reasonableness and a separate standard continues. Jury verdicts in battered women cases underscore the difficulty that jurors have in applying the general standard to women.¹⁸⁴ Women are seen as too strong, assertive, or "together" to fit the definition of victim, particularly when public perceptions of battering are shaped by "battered woman syndrome" as a kind of learned helplessness.¹⁸⁵ Recent legislative reform efforts to assist battered women facing criminal trials,¹⁸⁶ which have included a separate standard of reasonableness for jury instructions and other criminal law legislation, have revived the debate.¹⁸⁷

We can see resistance to the concept of women's reasonableness in other contexts. The particular dilemmas of reasonableness in the battered women's context must be understood in the more general context of women's subordination. For example, there have been parallel developments in the law of sexual harassment where courts have now adopted a "reasonable woman" standard on the theory that women's experiences with sexual harassment are so distinct that they cannot apply the generic legal standard of reasonableness.¹⁸⁸ However, there has been a consid-

¹⁸³ *Id.* at 444-45.

¹⁸⁴ See *id.* at 406-32 (analyzing problems of administering current standards).

¹⁸⁵ These stereotypes may particularly penalize women of color. When a battered woman becomes part of the criminal justice system after killing her abusive partner, racial assumptions and prejudices can play a critical role in the jury's acceptance of her self-defense plea. Lenore Walker has noted that the conviction rate of black women who have killed their abusers is double that of white women. See L. Walker, *supra* note 21, at 206 (characterizing defendant's anger as "unacceptable" to jurors).

Sharon Allard argues that the construct of battered woman syndrome may not only exclude the perspective and experiences of black battered women but also may erect additional obstacles. See Allard, *supra* note 47, at 204 (asserting that society's "dominant images of Black women as domineering, assertive, hostile, and immoral may hinder a judge's or juror's ability to comprehend a Black woman's act of self-defense as based on 'learned helplessness'").

¹⁸⁶ See Maguigan, *supra* note 6, at 445-47.

¹⁸⁷ See *id.*

¹⁸⁸ In recent years, numerous courts adjudicating sexual harassment claims have adopted the "reasonable woman" standard, an extension of the reasonable victim standard which focuses on the perspective of the victim rather than that of the alleged perpetrator. See *Ellison v. Brady*, 924 F.2d 872, 880 (9th Cir. 1991) (finding that reasonable woman could have found co-worker's conduct "sufficiently severe and pervasive to . . . create an abusive working environment" where co-worker sent an impassioned letter to plaintiff that severely disturbed her); *Yates v. Avco Corp.*, 819 F.2d 630, 637 (6th Cir. 1987) (stating that "person standing in the shoes of employee should be 'the reasonable woman' since plaintiff in this type of case is required to be a member of a protected class and is by definition female"); *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486, 1524 (M.D. Fla. 1991) (holding that reasonable woman would find abusive work environment that involved innumerable instances of sexual jokes, remarks, and pornographic pictures of women); see also Howard A. Simon, *Ellison v. Brady: A "Reasonable Woman" Standard for Sexual Harassment*, 17 *Employment Rel. L.J.*

erable debate within the field of sexual harassment law about the adequacy of the "reasonable woman" standard as a replacement for the more traditional "reasonable man" or "reasonable person" standard.¹⁸⁹ The movie "Thelma and Louise" ignited public debate in the summer of 1991 on violence against women and the appropriateness of women's violent responses, and suggested a vast gender gap between women and men on these issues.¹⁹⁰ Most significantly, as I was writing this Article, Pro-

71, 78 (1991) (advising that employer should consider "whether a reasonable person in the victim's shoes would consider the conduct sufficiently severe or pervasive to alter a condition of employment and create an abusive working environment"); Ellen Goodman, A Reasonable Standard, *Boston Globe*, October 13, 1991, at B3 ("If a jury of car drivers can understand how a 'reasonable pilot' would see one situation, a jury of men can see how a reasonable woman would see another event.").

The reasoning behind many courts' adoption of the reasonable woman standard often has been that the use of the male-biased "reasonable person" standard would only perpetuate existing norms, maintaining the current level of discrimination against women in the workplace. See *Radtke v. Everett*, 471 N.W.2d 660, 664 (Mich. Ct. App. 1991) ("[A] standard which views harassing conduct from the 'reasonable person' perspective has the tendency to be male-biased In such a case, harassers could continue to discriminate merely because such harassment was the norm at the workplace."), appeal granted, 487 N.W.2d 762 (Mich. 1992). This reasoning also incorporates, in many cases, the assumption that men and women have different perspectives, and that women have common concerns that men don't share. See *Ellison*, 924 F.2d at 878 (observing that "[c]onduct that many men consider unobjectionable may offend many women"); *Radtke*, 471 N.W.2d at 664 ("It is important to analyze and understand the different perspectives of men and women Women are more likely to regard a verbal or physical sexual encounter as a coercive and degrading reminder that the woman is viewed more as an object of sexual desire than as a credible coworker deserving of respect.").

Courts are careful, however, not to let the reasonable woman appear too sensitive or idiosyncratic. See *Rabidue v. Osceola Refining Co.*, 805 F.2d 611, 626 (6th Cir. 1986) (Keith, J., dissenting) ("I would have courts adopt the perspective of the reasonable victim which simultaneously allows courts to consider salient sociological differences as well as shield employers from the neurotic complainant."), cert. denied, 481 U.S. 1041 (1987); *Vermett v. Hough*, 627 F. Supp. 587, 608 (W.D. Mich. 1986) ("[Plaintiff] was not subjected to conditions, other than those created by her own physical and emotional difficulties, that a reasonable person would find intolerable."). But see *Robinson*, 760 F. Supp. at 1525 ("The fact that some female employees did not complain of the work environment or find some behaviors objectionable does not affect this conclusion concerning the objective offensiveness of the work environment as a whole."); Kathryn Abrams, Gender Discrimination and the Transformation of Workplace Norms, 42 *Vand. L. Rev.* 1183, 1209-15 (1989) (advocating that courts consider whether alleged harasser knowingly exploited particular sensitivities of woman, including those stemming from her racial, ethnic, or socio-economic background).

¹⁸⁹ Compare Abrams, *supra* note 188, at 1206 (arguing for adoption of standard in sexual harassment cases that "reflects women's perception of sexual harassment") with Nancy S. Ehrenreich, *Pluralist Myths and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law*, 99 *Yale L.J.* 1177, 1216-19 (1990) (arguing that "reasonable woman" standard is not neutral and cannot by itself constrain choices judges must make when defining its limits).

¹⁹⁰ The movie *Thelma and Louise* depicts two women who resort to violence against men in an effort to escape male violence and the confinement of male society. Its release generated a considerable amount of popular cultural criticism concerning the ways in which the two women used violence in retaliation, especially as compared with male violence against women. See, e.g., Margaret Carlson, *Is This What Feminism Is All About?*, *Time*, June 24, 1991, at 57

fessor Anita Hill alleged that Judge Clarence Thomas had sexually harassed her, and the Senate Judiciary Committee held its four-day hearing. Although many feminists initially felt hopeful about the possibility of education on the issue of sexual harassment, the pernicious use of sexist stereotypes that unfolded in the hearing demonstrated public resistance to the notion of women as reasonable.¹⁹¹ Professor Hill, calm and

(criticizing movie for having women play out male fantasy and showing that Hollywood is still a man's world); John Leo, *Toxic Feminism on the Big Screen*, U.S. News and World Rep., June 10, 1991, at 20 (criticizing movie as clearly most upsetting of new crop of woman-kills-man movies and comparing movie's message to fascism); Richard Schickel, *Gender Bender*, Time, June 24, 1991, at 52 (documenting raging debate over whether *Thelma and Louise* celebrates liberated females, male bashers, or outlaws); Laura Shapiro et al., *Women Who Kill Too Much: Is Thelma and Louise Feminism, or Fascism?*, Newsweek, June 17, 1991, at 63 (same). Many commentators noted that women identified with the retaliatory response of *Thelma and Louise*, and some commentators were concerned that the movie advocated an "open season on men."

Film critics distinguished the violence in *Thelma and Louise* from conventional societal representations of male violence, which are generally accepted without controversy. Susan Sarandon, one of the movie's stars, herself made the comparison between male and female cinema images of violence:

[The movie's criticism shows] what a straight, white male world movies traditionally occupy. This kind of scrutiny does not happen to "Raiders of the Lost Ark" or . . . ["Total Recall"] where [Arnold Schwarzenegger] shoots a woman in the head and says, "Consider that a divorce."

Schickel, *supra*, at 56.

Some feminist commentators have remarked that the most disturbing aspect of "Thelma and Louise" may not be that the women use violence to get what they want, but rather the message that women who are self-aware and powerful are not permitted to survive in a male-dominated society. "As film scholar Annette Insdorf puts it, 'When death is your only choice, how free are you?'" Id. For a discussion of "Thelma and Louise" in the context of women's role as "outlaw," see Elizabeth V. Spelman & Martha Minow, *Outlaw Women: An Essay on Thelma & Louise*, 26 New Eng. L. Rev. 1281 (1992); see also Susan N. Herman, *Thelma and Louise and Bonnie and Jean: Images of Women as Criminals*, 1 S. Cal. Rev. L. & Women's Stud. (forthcoming 1993).

¹⁹¹ By itself, Anita Hill's testimony was credible. Therefore, she was attacked for being delusional, which was easier than claiming she was an outright liar. See Felicity Barringer, *Psychologists Try to Explain Why Thomas and Hill Offer Opposing Views*, N.Y. Times, Oct. 14, 1991, at A10 (noting that "[t]he question of delusion has been mentioned repeatedly in the past two days, since John Doggett 3d . . . [said] that Ms. Hill had an unreasonable impression that he was romantically interested in her. He suggested that she may have harbored similar unreasonable assumptions about Judge Thomas.>").

Hill was also portrayed in an unflattering, "unfeminine" light, designed to show that she was the type of woman who would not have been bothered by dirty movies and the like.

On Friday, she played the role of a meek, innocent, shy Baptist girl from the South who was the victim of this big bad man. I don't know who she was trying to kid, because the Anita Hill that I knew and worked with was nothing like that. She was a very hard, tough woman; she was opinionated, she was arrogant, she was a relentless debater, and she was the kind of woman who always made you feel that she was not going to be messed with, like she was not going to take anything from anyone.

Statements by Character Witnesses in Defense of Judge Thomas, N.Y. Times, Oct. 14, 1991, at A14.

After the hearings concluded, it became clear that Professor Hill's self-confident and com-

composed, was viewed either as too remote, or as "delusional," while Clarence Thomas, who exploded in front of the Committee, was viewed as forceful and reasonable.¹⁹²

Public resistance to the concept of a woman's reasonableness underscores the long-term nature of our theoretical work. Early work on battered women perhaps underestimated the difficulty, the obstacles, the psychological barriers to seeing women as reasonable. The enormous credibility problems that women face as complainants and witnesses, most recently dramatized by Anita Hill, seem almost insurmountable. On the other hand, adoption of a separate standard of reasonableness, either for battered women in particular, for victims of sexual harassment, or for women in general, remains problematic. There is no single "reasonable woman," and I worry about the ways that adoption of a separate standard for battered women in particular or women in general will penalize women's different experiences and women's departures from a stereotypical norm.¹⁹³ It is important to challenge the concept of reason-

posed demeanor had actually undermined, rather than enhanced, her credibility among members of the American public. In a telephone poll of 501 adults conducted on October 13, 1991, 58% believed Clarence Thomas more, whereas only 24% believed Anita Hill more. See Elizabeth Kolbert, *Most in National Survey Say Judge Is the More Believable*, N.Y. Times, Oct. 15, 1991, at A1. 46% of those surveyed had an "unfavorable" image of Hill. 54% of the people surveyed thought that Anita Hill's charges were not true on October 13 (after her testimony); prior to her testimony (Oct. 9), only 47% had made their minds up that her allegations were untrue. *Id.* See also Maureen Dowd, *Image More than Reality Became Issue, Losers Say*, N.Y. Times, Oct. 16, 1991 ("Many Senators also found Professor Hill an unsympathetic figure because . . . she seems too calculating and career-centered . . .").

¹⁹² The reactions of the national press to the Thomas confirmation hearings have reflected, and largely reinforced, national stereotypes of female provocativeness and tendency to hysteria. A surprising, and saddening, number of women publicly asserted their support for Clarence Thomas in spite of the charges brought by Anita Hill. One woman asserted, "she's consumed with [having power] over him and getting her way." Joyce Price, *Thomas Will Not "Cry Uncle," Eager Callers Sure Where Truth Rests*, Wash. Times, Oct. 13, 1991, at A1. An Atlanta man stated, "[e]very woman who's brought down a major man in the last five years has made millions of dollars . . . I look at what Anita Hill is saying, and I don't believe it." *Id.*

Some commentators judged Anita Hill's motives sharply and attributed her claims to a conspiracy devoted to discrediting a conservative African-American man. "The hysterical feminists and their thoroughly emasculated male toadies—someone noted the other day that all the men on National Public Radio sound like women, and vice versa—owe a debt to the red-baiters of a generation ago." Wesley Pruden, *Feminist Hysteria and Sex-Baiting*, Wash. Times, Oct. 9, 1991, at A4. "Anita Hill, by her own words, renders herself a liar in the judgment of reasonable men and women." *Id.*

A number of reports sought a psychological basis for Hill's claims, and a number of people cited actually "diagnosed" Professor Hill as "a victim of erotomania—or the 'Fatal Attraction' syndrome," perhaps in an effort to distance Hill's experience from the "normal" woman's workplace experience. See Price, *supra*.

¹⁹³ Just like the battered women's cases, there can be no standard "reasonable woman standard" or even a standard "reasonable harassed woman." Working class women interviewed in Baltimore all found Anita Hill unbelievable because they claimed they would have stopped the

ableness in general, bringing to it the wealth of different experiences of both men and women. We must describe the specificity, the particularity, of these experiences, grounding them in the notion of women's experiences,¹⁹⁴ without incorporating a separate women's standard. Linking particularity to generality is important in this context as well in order to assure a more inclusive generality.

III

PARTICULARITY AND GENERALITY: IMPLICATIONS FOR FEMINIST THEORY AND PRACTICE

Several common threads run through the theme of this Article—the problem of describing the experience of battering accurately and simultaneously being able to translate it to courts. First, although the battered women's movement has had to demonstrate distinctive aspects of the problem of battering in order to establish battered women as a legal and social construct, the characterizations of distinctiveness have been incomplete, have not explained fully the complex experiences of battering, and have constrained feminist analysis. I have suggested that we must reexamine critically some of our implicit assumptions about these characterizations in order both to understand what is distinctive about battered women's experiences and also to see them in a larger, and more general, context of violence between intimates.

Second, we must rethink some of the assumptions that have shaped the movement in order to grapple with new and hard problems—the experience of lesbian-battering, elder-abuse, the problems of battered women with abused children, and the complex experiences that battered women have as mothers. Our characterizations and descriptions of battered women's particular circumstances and experiences (their particularity) have been inadequate and the incompleteness of these descriptions of particularity highlight more general themes. Although the development of a distinct legal construct concerning male battering of women has been theoretically important, and strategically necessary, moving to the more general level of violence between intimates and women's subordination can illuminate theoretical and strategic issues that advance our work. Focusing only on particularity can be problematic. The development of a distinct construct of battered women emerged from the

harassment. Many of them had encountered harassment in the past and said they had put a stop to it themselves. Lawyers, human services workers, and politicians, on the other hand, believed Anita Hill. See Felicity Barringer, *The Thomas Confirmation: Hill's Case is Divisive to Women*, N.Y. Times, Oct. 18, 1991, at A10.

¹⁹⁴ See Christine A. Littleton, *Does it Still Make Sense to Talk About "Women"?*, 1 UCLA Women's L.J. 15 (1991). I agree with Professor Littleton that feminist theory must focus on women—but it can also link to larger themes such as violence, as well.

women's movement as a particular and concrete example of male domination. Yet paradoxically, our emphasis on particularity, on the distinctiveness of battered women's experiences, has had some unintended impact of compounding the problems of battered women because we have insufficiently interconnected battered women's experiences to the larger and more general problems of women.

This Article has underscored, in a variety of different contexts, the need to emphasize both particularity and generality in both feminist theory and practice. Although this discussion of the issue of particularity and generality in feminist theory and practice is preliminary, and part of a larger project, I hope this Article will stimulate dialogue on this "fertile ground"¹⁹⁵ for feminist methodology. We must hold on to both particularity (the particular experiences of women who have had relationships with battering men) and generality (violence and power and control, reasonableness and the larger struggle of women in the world) simultaneously. This does not mean denial of the distinctiveness of women's experiences with woman-abuse. It means both a richer and more detailed description of women's particular problems, an acknowledgment of abuse as part of a general continuum of violence between intimates, and an understanding of the way in which particular experiences of woman-abuse are shaped by more general experiences of motherhood, unequal and constrained relationships with men, and general societal attitudes towards women.

We can see the unintended implications of our emphasis on particularity in work on woman-abuse in practice. In the media and legal and legislative arenas, problems that battered women face are rarely linked to women's subservient position within society and the family structure, sex discrimination in the workplace, economic discrimination, lack of child care, lack of access to divorce, inadequate child support, problems of single motherhood, and lack of educational and community support. The focus is still on the woman and her individual pathology instead of on the batterer and the social structures that support the oppression of women and glorify violence. As Susan Schechter has suggested, this weakens the fight for women's liberation as the larger struggle.¹⁹⁶ Thus, both in our feminist theory and our feminist practice, we must self-consciously make the link to the larger women's movement and to more general issues of gender subordination and place battering in context. If we are clearer in our descriptions of experience and acknowledge both a richer particularity and a more inclusive generality, we will be more effective in making change.

¹⁹⁵ See Fineman, *supra* note 6, at 25-26.

¹⁹⁶ See S. Schechter, *supra* note 37, at 252.

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