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THE VIOLENCE AGAINST WOMEN ACT AND THE CONSTRUCTION OF MULTIPLE CONSCIOUSNESS IN THE CIVIL RIGHTS AND FEMINIST MOVEMENTS*

*Jenny Rivera***

*Cuando las multitudes corran alborotadas
dejando atrás cenizas de injusticias quemadas,
y cuando con la tea de las siete virtudes,
tras los siete pecados, corran las multitudes,
contra ti y contra todo lo injusto y lo inhumano,
yo iré en medio de ellas con la tea en la mano.****

* In this Article, I have adopted Professor Angela P. Harris' description of "multiple consciousness" as defining that moment in time where the theoretical and experiential voices co-exist and challenge one another. See Angela P. Harris, *Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 583-84 (1990).

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*** Julia de Burgos, *A Julia de Burgos*, in MAKING FACE, MAKING SOUL, HACIENDO CARAS: CREATIVE AND CRITICAL PERSPECTIVES BY WOMEN OF COLOR 227, 228 (Gloria Anzaldúa ed., 1990). As translated:

While the multitudes race about frantically,
leaving behind ashes from burnt-out injustices,
and while with the torch of the seven virtues
the multitudes pursue the seven sins,
against you, and against everything unjust and inhuman,
I shall go into their midst with the torch in my hand.

Id. at 230 (William M. Davis trans.).

INTRODUCTION

The enactment of the Violence Against Women Act ("VAWA")¹ in 1994 was, ostensibly, a success of historic proportions on various political and social fronts. It has significantly furthered efforts to legitimize a feminist anti-violence agenda within the political mainstream by providing federal criminal and civil legal remedies for female survivors of violence.² Indeed, significant portions of the VAWA were originally viewed as highly controversial, in part because of their feminist origin.³ These provisions, and consequently the VAWA *in toto*, were politicized in a derogatory manner prior to the VAWA's passage.⁴ When the VAWA was finally signed into legislation, it marked the end of a protracted political and educational campaign conducted in Congress and across the country on gender-motivated violence.

While the enactment of the VAWA is undeniably a victory for feminism,⁵ and as such served as a vehicle for a sophisticated

¹ Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902 (codified as amended in scattered sections of 8, 18 and 42 U.S.C. (1994)) [hereinafter VAWA].

² 42 U.S.C. § 13981 (1994).

³ See *infra* part II.A.

⁴ See Sally Goldfarb, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 391, 392-93 nn. 14-15 (1996).

⁵ In this Article "feminism" refers to the theoretical and political foundations of the movement which has advocated on behalf of women and which has its chronological roots in the 1970s. While there is no "generic" feminist theory, the several ideological approaches to questions of gender equality and gender equity have the common goal of identifying and positing legal and social responses to women's unequal status. For some, the focus has been on the differences between men and women, which thus informed these theorists' advocacy for rules and strategies in response to those differences. Still others adopted a theory with a foundational basis asserting that women's oppression must be considered and addressed by recognizing patriarchy and the subjugation of women through male dominance in society. For a discussion of these various developments and ideological approaches, see Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1990).

national discourse on violence between intimate partners,⁶ the

An approach which challenges the very doctrinal foundations of these feminist theories has been articulated by several feminists of color and White feminists, who argue that the theoretical and practical base for feminism must express the experiences of *all* women. These theorists have argued for feminist doctrine which reflects the various and varied realities of women of color. See generally Kimberlé Crenshaw, *A Black Feminist Critique of Antidiscrimination Law and Politics*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 195 (David Kairys ed., 1990); BELL HOOKS, *AIN'T I A WOMAN? BLACK WOMEN AND FEMINISM* (1981) [hereinafter *AIN'T I A WOMAN?*]; BELL HOOKS, *YEARNING: RACE, GENDER, AND CULTURAL POLITICS* (1990); Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539 (1989); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 583-84 (1990); Marlee Kline, *Race, Racism, and Feminist Legal Theory*, 12 HARV. WOMEN'S L.J. 115 (1989); Celina Romany, *Ain't I A Feminist*, 4 YALE J.L. & FEMINISM 23 (1991).

⁶ Violence against women by intimate partners is commonly referred to as "domestic violence." In previous articles, I have voiced my opposition to the use of the word "domestic" as a qualifier for this category of violence because it characterizes violence against women by current and former spouses and lovers as sufficiently distinct from all other forms of violence so as to justify wholly different, sometimes inadequate, sanctioning of such violence. See Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 232 n.5 (1994) [hereinafter *Domestic Violence Against Latinas*]; Jenny Rivera, *Puerto Rico's Domestic Violence Prevention and Intervention Law and the United States Violence Against Women Act of 1994: The Limitations of Legislative Responses*, 5 COLUM. J. GENDER & L. 78, 79 n.8 (1995) [hereinafter *Puerto Rico's Domestic Violence Law*]. Undeniably, violence against women by these categories of perpetrators is different from other violent crimes committed by strangers or nonintimate acquaintances and relatives. However, the use of "domestic" as a qualifying term does more than simply categorize based on the status of the abuser. This terminology has, in effect, "domesticized" the very act of violence and facilitated the insulation of this violence from public scrutiny and criminalization. See Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 977 (1991) ("Thus, in the so-called private sphere of domestic and family life, which is purportedly immune from law, there is always the selective application of law. Significantly, this selective application of law invokes 'privacy' as a rationale for immunity in order to protect male domination.").

However, for the limited purpose of consistency with other works on this subject matter, and where otherwise necessary, the term "domestic violence" is used in this Article to refer to violence between current and former intimate

passage of the VAWA is also a civil rights victory. This Article argues that, at a time when the hard-won gains of civil rights and feminist struggles are being challenged and dismantled,⁷ both movements must work together cooperatively. In order for cooperation to be successful, cooperation cannot be based or forged solely on the mutual need for a solid constituency. Rather, cooperation must be the acknowledged result of the application of civil rights and feminist doctrines to the issues and problems faced by women and people of color in society. The VAWA represents an important opportunity for civil rights activists and feminists to identify common goals and philosophies of their respective social and legal reform movements, and an opportunity to convert their doctrines into practice through joint action.⁸

The recognition that the civil rights movement can be gender-conscious and gender-responsive, and that the feminist movement can speak to issues of race and ethnic discrimination—that both movements can be constructed in such a way as to account for and respond to the particular issues and concerns of women of all races and ethnic backgrounds—allows for collaboration between the proponents of these two movements. As a consequence, both movements will benefit and can fully pursue their mutual goals of equity and justice. The concept of a multiple consciousness which governs and informs these movements can be realized.

Part I of this Article provides a brief overview of the common, yet often conflicting, history of the civil rights and feminist movements and provides examples of why the current political climate threatens to dismantle the hard-won advances of both movements, and, simultaneously, serves as an impetus to unite the

partners. To the extent that confusion does not result, I use “intimate partner violence” or “violence between intimate partners” to refer to what is colloquially referred to as “domestic violence” between current and former spouses and intimate partners.

⁷ See *infra* part I.B.

⁸ See *infra* part I.B. Feminists and women of color civil rights activists are not mutually exclusive groups. Rather, the goals and ideology of the two are similar and complementary, as I suggest in this Article. It is in the practice of their respective doctrines and visions wherein the two movements have had difficulty negotiating terms of coexistence. See *infra* part I.

two around common goals. Part I concludes that, given the histories of the two movements and their relative positions in the current political landscape, the VAWA is a potential point of convergence where constituencies and representatives of both groups can construct a dialogue and strategy that furthers their mutual and respective goals. This is partly because, at least theoretically, the VAWA responds to the concerns of both communities of color and women.⁹ Part II discusses the VAWA in greater detail and identifies the VAWA provisions of particular interest for women of color, especially Latinas and immigrant women.¹⁰ In addition, part II identifies some of the potential problems foreseeable in the application of these provisions. Lastly, this Article concludes by urging civil rights and feminist activists to expand and equalize their collaborative efforts and apply their respective social reform doctrines to each others' struggles. It further encourages activists to maximize the VAWA's potential for reform by aggressively utilizing its remedies, calling for enactment and enforcement of those provisions which take account of the particular needs of women of color and immigrant women, and combining the two movements' considerable experiences and strengths to end the multiple forms of intimate partner violence against all women.

⁹ In this Article, "communities of color" and "women of color" refer, respectively, to community groups and individual women who are African American, Asian, Caribbean, Latin American, Native American and Southeast Asian. This includes persons of mixed ethnic origin, those born outside and within the United States, and those persons whose roots are in Asia or are otherwise part of the Afro-Caribbean diaspora.

¹⁰ The discussion in this Article concerning immigrant women is limited to the issues and experiences of immigrant women of color.

I. THE COMMON AND CONFLICTING HISTORIES AND IDEOLOGIES OF CIVIL RIGHTS AND FEMINIST MOVEMENTS

A. *Violence As a Form of Defensive and Offensive Political Action*

Historically, political and economic issues have served as fodder for increasing tensions and disconnection between women's rights activists and civil rights activists, and have, likewise, nourished a political discourse which characterizes members of these two movements as representing culturally and politically distinct populations.¹¹ Women of color have themselves voiced concerns

¹¹ See *AIN'T I A WOMAN*, *supra* note 5, at 127-31 (noting that an early Black woman activist, Sojourner Truth, spoke out for the rights of all women, even though she encountered resistance from men and women willing to exploit racial fears by aligning themselves with pro-slavery forces in order to advance the cause of White women); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 150-60 (1989) (presenting the limits of feminists theories which exclude or fail to encompass the experiences of Black women); Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism [or Other-isms]*, 1991 DUKE L.J. 397, 399-401 (1991) (discussing how White supremacy is reflected in White womens' racism and feminist rhetoric, which compares sexism to racism and thus "perpetuates patterns of racial domination by marginalizing and obscuring the different roles that race plays in the lives of people of color and of [W]hites"); Maivân Clech Lâm, *Feeling Foreign in Feminism*, 19 SIGNS: J. WOMEN CULTURE & SOC'Y 865, 866 (1994) (noting that "from the position that I occupy alongside other women of color who have experienced racial or colonial discrimination and in consequence struggle to define and defeat it, certain [W]hite feminist agendas in the United States appear not only off target but decidedly filmic"); Margaret E. Montoya, *Máscaras, Trenzas, Y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1, 1 (1994) (exploring "the various masks (máscaras) used to control how people respond to [persons of color, the poor, women, gays and lesbians] and the important role such masks play in the subordination of Outsiders") (citations omitted).

that the feminist movement and certain feminists have been insensitive towards the issues and status of women of color by ignoring, marginalizing or co-opting these voices.¹² Racism and discrimination based on national origin, ethnicity, culture and language have been ignored even within the feminist rank and file, and have been used as vehicles for the furtherance of a feminist agenda even in the face of the adverse impact of such strategies on

In *When and Where I Enter: The Impact of Black Women on Race and Sex in America*, Paula Giddings documents the different political experiences of African American and White women, and argues that:

The White wife was hoisted on a pedestal so high that she was beyond the sensual reach of her own husband. . . . In the nineteenth century, Black women's resistance to slavery took on an added dimension. . . . For women this meant spurning their morally inferior roles of mistress, whore, and breeder—though . . . they were "rewarded" for acquiescing in them. It was the factor of reward that made this resistance a fundamentally feminist one, for at its base was a rejection of the notion that they were the master's property.

PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 33-43 (1984).

¹² See CAROL HARDY-FANTA, *LATINA POLITICS, LATINO POLITICS: GENDER, CULTURE, AND POLITICAL PARTICIPATION IN BOSTON* 155-59 (1993) (discussing reasons why Latina feminists and Anglo feminists have not effectively established a cooperative relationship, including the Anglo superiority which is reflected in the work and attitudes of some mainstream feminist organizations and feminists); AIN'T I A WOMAN, *supra* note 5, at 119-96; Crenshaw, *supra* note 11, at 155-60; Grillo & Wildman, *supra* note 11, at 401-10; Lâm, *supra* note 11, at 866-67; see also Rosalyn Terborg-Penn, *Discrimination Against Afro-American Women in the Women's Movement 1830-1920*, in *THE BLACK WOMAN CROSS-CULTURALLY* 301, 301-15 (Filomina Chioma Steady ed., 1981) (detailing racism within the feminist movement and among White feminists in the late nineteenth and early twentieth centuries); Sharon Angella Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 *UCLA WOMEN'S L. J.* 191, 195-98 (1991) (arguing for an intersectional analysis of the battered woman syndrome to incorporate the experiences of Black women, as an alternative to the battered woman syndrome theory which is based on stereotypes of White women); *Domestic Violence Against Latinas*, *supra* note 6, at 242-55 (describing the difficulty in application and transference of various anti-violence strategies within Latino communities); Romany, *supra* note 5, at 23 (critiquing exclusive gender narratives as a basis of feminist legal theory and discussing the limitations of the approaches of several feminist scholars).

communities of color and women of color.¹³ For example, it is now commonly acknowledged that leading White suffragists were willing to accept the continued denial of the right to vote to Blacks in order to secure the franchise for one class of women—White women.¹⁴

¹³ See ANGELA Y. DAVIS, *WOMEN, RACE & CLASS* 110, 114-17 (1981); GIDDINGS, *supra* note 11, at 119, 128-29; Angela Y. Davis, *Racism, Birth Control, and Reproductive Rights*, in *FROM ABORTION TO REPRODUCTIVE FREEDOM: TRANSFORMING A MOVEMENT* 15, 15-25 (Marlene Gerber Fried ed., 1990); Terborg-Penn, *supra* note 12, at 301-15.

For example, there is evidence that some battered women's shelters deny entry to Latinas who do not speak English. See *Domestic Violence Against Latinas*, *supra* note 6, at 252-53. The adverse consequences of such a policy falls disproportionately on Latinas and Asian women. The policy is defended, in part, as allegedly furthering the best interest of all of the women serviced by the shelter because it ensures that only women for whom the shelter can provide adequate services are shelter residents. Catherine E. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1021-22 (1993); Telephone Interview with Shelter Representatives (1991-92). To the extent that the policy is founded on a lack of bilingual-bicultural staff at these shelters, the policy illustrates a self-fulfilling prophecy. Hiring and promotion policies, policies which can be changed and modified by the shelters, are the basis for the resultant lack of a bilingual-bicultural staff. Thus, the exclusion policy, based on language and national origin, is a product of institutional policies and practices which are discriminatory in nature and neither necessary nor justifiable. The language and ethnicity-based exclusion policy furthers institutionally sanctioned national origin discrimination.

¹⁴ See DAVIS, *supra* note 13, at 70-86. Davis relates the history of how the women's suffrage movement of the late 19th-century was a direct outgrowth of the abolition movement. When Black men were given the vote before White women, a split in the anti-slavery and women's suffrage communities occurred, spurred by Southern Democratic politicians who opposed passage of the Fourteenth and Fifteenth Amendments. Previously staunch supporters of abolition, leaders of the women's movement often made shocking public statements about the relative fitness of White women over Black men to vote. Elizabeth Cady Stanton, when asked her thoughts on the Black man having the vote, said:

I would not trust him with my rights; degraded, oppressed himself, he would be more despotic with the governing power than ever our Saxon rulers are. If women are still to be represented by men, then I say let only the highest type of manhood stand at the helm of State.

Communities of color and men of color have, on occasion, used cultural differences reflected in White feminism as a wedge between women of color and White women. They have called for women of color to focus the civil rights agenda on the “broader” needs of the “community,” rather than on the supposedly “narrower” issues raised by feminists.¹⁵ There have also been attempts to relegate women of color to “traditional” gender roles within social justice movements.¹⁶ In the extreme, subjects

DAVIS, *supra* note 13, at 84-85 (citing 2 ELIZABETH CADY STANTON ET AL., HISTORY OF WOMAN SUFFRAGE 214 (Charles Mann 1887)). Davis succinctly notes that:

their defense of their own interests as [W]hite middle-class women—in a frequently egotistical and elitist fashion—exposed the tenuous and superficial nature of their relationship to the postwar campaign for Black equality. . . . [I]n articulating their opposition with arguments invoking the privileges of [W]hite supremacy, they revealed how defenseless they remained—even after years of involvement in progressive causes—to the pernicious ideological influence of racism.

DAVIS, *supra* note 13, at 76; *see also* Terborg-Penn, *supra* note 12, at 301-15.

Indeed, White suffragists promoted a policy of “expediency,” by which they sought to gain the support of White segregationists with their arguments that by giving women the vote, they could offset the effects of giving Blacks and “foreigners” the right to vote. DAVIS, *supra* note 13, at 110-17. Eventually, Black women were directly threatened by the proposed U.S. Election Bill of 1916, which would have resulted in the effective disenfranchisement of many Black women due to the application of election qualifications which were co-opted as part of the bill. Fortunately, the Election Bill failed. GIDDINGS, *supra* note 11, at 119, 128-29.

¹⁵ Sonia A. López, *The Role of the Chicana Within the Student Movement*, in ESSAYS ON LA MUJER 16, 26 (Rosaura Sánchez & Rosa Martínez Cruz eds., 1977) (writing that Chicanas who raised gender issues and concerns about male leadership within the Chicano Student Movement were marginalized, isolated and discredited, and referred to derogatorily as “women’s libbers” and “lesbians”); Blanca Vázquez, *Mi Gente: Interview with Antonia Pantoja & Esperanza Martell*, CENTRO, Winter 1989-90, at 48, 49-50 (interview with Antonia Pantoja) (discussing Latino males’ deliberate rejection of Latina leadership in the 1970s as evidenced, in part, by a concerted effort to remove Latinas from leadership positions).

¹⁶ *See, e.g.*, López, *supra* note 15, at 16. López describes the Chicana involvement in the student social reform movement in the Southwest and attempts to marginalize women, for:

construed as “women’s issues” have been treated as somehow antithetical to a community agenda, concerned primarily with issues such as employment, housing and poor quality education systems for African Americans, Latinos, Native Americans and Asians.¹⁷

[T]hough Chicanas were active from the inception of the [Chicano] Movement, they were generally relegated to traditional roles played by women in society. It was the realization of this oppressive situation and their secondary roles within the Movement which led many Chicanas to initiate a process by which they could begin to resolve the inconsistencies between male/female roles.

López, *supra* note 15, at 16; *see also* HARDY-FANTA, *supra* note 12, at 154-55 (“Latina women face pressure to be less assertive and more passive in public than their male counterparts. . . . Even Latino men notice how Latina women’s contributions are stifled by Latino men who are sexist.”).

¹⁷ *See* AIN’T I A WOMAN, *supra* note 5, at 87-117 (discussing Black patriarchy within the Black community); Crenshaw, *supra* note 11, at 160-66 (discussing the Black liberation political movement’s failure to address fully issues of Black women and how race-based politics may be used to marginalize Black women); *Domestic Violence Against Latinas*, *supra* note 6, at 255-56 (discussing the devaluation of women’s issues within the Latino civil rights struggle).

One of the most significant and controversial areas of aggressive discourse resulting in schismatic polarizing dialogue has been reproductive rights. White women have sounded the bell for reproductive freedom focusing on the politics of pro-choice and abortion rights issues. At times this has resulted in severe retrenchment by women of color and communities of color, as they have distanced themselves from an agenda that centers on abortion rights, styled as a “White feminist agenda,” in furtherance of a broader agenda which politicizes reproductive rights in the context of access to adequate health services for women of color and their families. *See* Cándida Flores et al., *La Mujer Puertorriqueña, Su Cuerpo, y Su Lucha por la Vida: Experiences with Empowerment in Hartford, Connecticut*, in FROM ABORTION TO REPRODUCTIVE FREEDOM: TRANSFORMING A MOVEMENT, *supra* note 13, at 221, 221-31 (detailing the formation, purpose and work of several Latina health organizations). The distinction presents philosophical and political discontinuities between White feminists and women of color, and serves to distract both groups from mutually beneficial campaigns and strategies.

Nevertheless, there is a practical and political need for groups formed by women of color to address and give visibility to issues affecting women of color. The National Black Women’s Health Project and the Latina Roundtable on Health and Reproductive Rights are two examples of organizations founded and run by women of color in furtherance of a broader agenda for women of color.

Issues of particular concern and impact as related to women of color, however, even within those subject areas, have been marginally considered, or have been relegated to secondary or ancillary status as part of a "family rights" agenda.¹⁸ Family rights agendas often pit the rights of the child against those of the woman, more frequently than not to the detriment of women's

Reproductive Rights Position Paper: The National Black Women's Health Project, in FROM ABORTION TO REPRODUCTIVE FREEDOM: TRANSFORMING A MOVEMENT, supra note 13, at 291, 291-92 ("The National Black Women's Health Project (NBWHP) of Atlanta, Georgia, was founded as a self-help and health advocacy organization to improve chronically poor and declining health status of Black women and their families."). The purpose of the Latina Roundtable on Health and Reproductive Rights is:

The LATINA ROUNDTABLE ON HEALTH AND REPRODUCTIVE RIGHTS is a coalition of individual activists who have come together to address the particular health needs and reproductive rights of Latinas. The Roundtable works to strengthen our public voice, educate ourselves and the Latino community, develop leadership amongst Latinas, and to develop policy which addresses the health needs of Latinas and thus the entire community.

LATINA ROUNDTABLE ON HEALTH AND REPRODUCTIVE RIGHTS, BY-LAWS OF LATINA ROUNDTABLE ON HEALTH AND REPRODUCTIVE RIGHTS art. I (1995) (on file with the *Journal of Law and Policy*) (the author is a founding member and a current board member of the Latina Roundtable on Health and Reproductive Rights). The National Black Women's Health Project and the Latina Roundtable on Health and Reproductive Rights organizations have been successful in voicing and making visible issues of African American women and Latinas.

Notably, as the socio-economic status of Latino and Black males has worsened, community efforts have focused on the particular needs of men and male youth within these communities. *See generally* WALTER W. STAFFORD, CAUSE FOR ALARM: THE CONDITION OF BLACK AND LATINO MALES IN NEW YORK CITY (1991). Concern over the state of Latino and Black males has led to the popularization of certain programs focused strictly on males within their communities. For example, the recent establishment of all-male, Afro-centric education programs reflects an education strategy for African American male youth. *See generally* Russell Bradshaw, *All-Black Schools Provide Role Models: Is This the Solution?*, 68 CLEARINGHOUSE REV. 146 (1995).

¹⁸ *Puerto Rico's Domestic Violence Law, supra note 6, at 91-92* (arguing that an anti-violence feminist agenda which focuses on recognition of women's autonomy is doctrinally and pragmatically at odds with political and legal strategies which seek to preserve and protect traditional visions of the family unit).

rights.¹⁹ Women's autonomy, thus, has been cast as oppositional to the development and success of an effective civil rights struggle.

Despite the marginalization or devaluation of many of their own interests, women of color participated in the general struggles for justice characteristic of the civil rights movement.²⁰ Regardless of the perceived oppositional nature of feminist ideology and activism, significant numbers of women of color have also identified with certain aspects of feminism. Influenced by the intersection of issues affecting them as members of communities struggling for civil

¹⁹ See, e.g., Marie Ashe & Naomi R. Cahn, *Child Abuse: A Problem for Feminist Theory*, 2 TEX. J. WOMEN & L. 75, 76, 84 (1993) (noting that legal and policy attempts to address child abuse "tend[] to reduce to a story of 'bad mothers' . . ." and that stories of battered women who abuse their children or drug-addicted pregnant women have "deeply divided feminists"); Nancy Chodorow & Susan Contratto, *The Fantasy of the Perfect Mother*, in WOMEN AND THE LAW 523, 523-37 (M.J. Frug ed., 1992) (discussing theoretical problems arising from the recurring and conflicting notions that "having a child makes a mother all-powerful or totally powerless"); Lisa C. Ikemoto, *The Code of Perfect Pregnancy: At the Intersection of the Ideology of Motherhood, the Practice of Defaulting to Science, and the Interventionist Mindset of Law*, 53 OHIO ST. L.J. 1205, 1209 (1992) (arguing that the requirements of women's socially defined "perfect" conduct during pregnancy "devalues women of color, poor women and culturally stigmatize[s] women as mothers"); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Rights of Privacy*, 104 HARV. L. REV. 1419, 1421, 1432-36 (1991) (arguing that prosecution of drug-addicted mothers increases state intervention in the lives of pregnant women and is justified as necessary to protect the fetus; this trend impacts disproportionately on poor Black women thus furthering devaluation of Black women in American society); Celina Romany, *Killing "The Angel in the House": Digging for the Political Vortex of Male Violence Against Women*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 285, 291 (Martha Fineman & Roxanne Mykitiuk eds., 1994) ("As long as the family remains the consolidating unit of male hierarchy, the state can remain neutral. . . .").

²⁰ In fact, women of color made, and continue to make, significant contributions to the civil rights movement. See generally WOMEN IN THE CIVIL RIGHTS MOVEMENT: TRAILBLAZERS AND TORCHBEARERS 1941-1965 (Vicki L. Crawford et al. eds., 1990) (detailing the contributions and participation of Black women during the early civil rights period); NOTABLE HISPANIC AMERICAN WOMEN (Diane Telgen & Jim Kamp eds., 1993) (listing Latina civil rights activists and women's rights activists); Vázquez, *supra* note 15, at 52 (interview with Esperanza Martell) (discussing chronology of Latinas' political efforts in the 1970s, including formation and activities of the Latina Women's Collective).

rights, and issues affecting them more particularly as women in those communities, women of color began defining and articulating areas of particular concern to them within their communities.²¹ At times this agenda-setting was done within the feminist White women's movement, and at times it was possible to work within civil rights organizations and efforts. More often, however, women of color worked on issues of particular importance to Latinas, and African American, Asian and Native American women as part of independent campaigns.²² Internal community struggles over the positioning of "women's" issues within the larger social movements continued, as did the ongoing positioning of feminism as inherently oppositional to the civil rights movement.²³

²¹ See CIVIL RIGHTS ISSUES OF ASIANS AND PACIFIC AMERICANS: MYTHS AND REALITIES 102-64 (U.S. Comm'n on Civil Rights ed., 1980) (presentations and papers on Asian and Pacific American women's specific issues, including problems and stereotyping in the areas of health, employment and education, and strategies for reform); Nancy Saporta Sternbach, *A Deep Racial Memory of Love: The Chicana Feminism of Cherrie Moraga*, in BREAKING BOUNDARIES: LATINA WRITING AND CRITICAL READINGS 48, 48-61 (Asunción Horno-Delgado et al. eds., 1989) (discussing the writings of a Chicana feminist, Cherrie Moraga, on White feminism and Chicano culture); Vázquez, *supra* note 15, at 52-54 (interview with Esperanza Martell) (describing political community-based consciousness-raising within a Latina coalition effort in the 1970s). See generally MAKING FACE, MAKING SOUL, HACIENDO CARAS: CREATIVE AND CRITICAL PERSPECTIVES BY WOMEN OF COLOR (Gloria Anzaldúa ed., 1990) (collection of works by women of color on racism, sexism, survival in the United States and constructing identities on their own terms).

²² This tenuous positioning of women of color contributed to factors resulting in the establishment of such organizations as the Latina Roundtable on Health and Reproductive Rights, an organization with its headquarters in New York City which focuses on the health issues of Latinas; the National Black Women's Health Project, a national organization which addresses the health issues of African American women; the New York-based Violence Intervention Program, and Washington, D.C. group, Hermanas Unidas, two organizations with domestic violence programs providing bilingual-bicultural services to Latina survivors of domestic violence; and the San Francisco Asian Women's Shelter and New York's Sakhi, which address the issues of Asian women domestic violence survivors. See Constance L. Hays, *Enduring Violence in a New Home*, N.Y. TIMES, Dec. 6, 1993, at B3 (describing the need for, purpose and work of Sakhi and the Violence Intervention Program); see also *supra* note 17.

²³ HARDY-FANTA, *supra* note 12, at 157-59 (discussing how the Anglo

As the women's anti-violence movement within the United States grew during the 1970s,²⁴ women of color also expanded and developed their efforts against violence targeting women in their respective communities. At times the efforts of these two movements complemented each other, but at other times women of color felt like outsiders or, at best, appendages to those struggles—mere afterthoughts to be included as footnotes concerning racism, or the lack of bilingual services.²⁵ Worse still, treatment of women of color was often parasitic or paternalistic, as exemplified by the inclusion of women of color in feminist activities solely to legitimate those activities within communities of color, or for other forms of political expediency.²⁶

feminists' focus on abortion alienates Latinas from the feminist movement because it does not address Latinas' concerns about abortion, and because Latinas are focused heavily on "survival" issues—those issues of critical importance to both men and women within the Latino community, such as economic subsistence).

²⁴ I refer here to the movement spearheaded by women to specifically address violence against women, in contrast to other types of violence. These movements, both of which emerged in the 1970s out of larger women's struggles, are sometimes referred to individually as the rape crisis and battered women's movements. *See, e.g.*, KATHARINE T. BARTLETT, *GENDER AND LAW* 699-700 (1993); SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* 53-62 (1982).

²⁵ HARDY-FANTA, *supra* note 12, at 156-57 (discussing the unequal status of Latinas in Anglo feminist organizations' strategy development); *see also* Lynet Uttal, *Inclusion Without Influence: The Continuing Tokenism of Women of Color*, in *MAKING FACE, MAKING SOUL, HACIENDO CARAS: CREATIVE AND CRITICAL PERSPECTIVES BY WOMEN OF COLOR*, *supra* note 21, at 42, 42-45.

²⁶ I am referring here to the now familiar strategy of including women of color merely as token representatives in certain political activities. Tokenism occurs by "including" women of color to further a "preset" agenda, in order to legitimate a political effort based on claims of diversity. However, tokenism also refers to the inclusion of women of color without framing issues from a diverse female base so as to address race, ethnic, culture and language issues. This strategy has been used by certain groups and individuals, for various political and social agendas. It is in no way particular to any group of women or women's movements. HARDY-FANTA, *supra* note 12, at 156-57 (describing examples of the inclusion of Latinas solely for purposes of cosigning Anglo feminist organizations' flyers and cosponsoring Anglo feminists' events, and how such

B. Anti-Violence Struggles As Critical Foundations for Cooperation

The deprecating and debilitating consequences of violence have led both civil rights and feminist activists to embrace anti-violence strategies and philosophies.²⁷ Communities of color and women long ago recognized the need for anti-violence strategies and political responses to popular violence,²⁸ as documented by the prevalent role of violence during the civil rights movement of the 1950s and 1960s.²⁹ Only a few decades ago force was used to physically exclude African American and Latino children from segregated White schools, and force is still being used today to exclude people of color from White-only residential neighborhoods³⁰ and White-dominated job sectors.³¹ Moreover, hate

actions “reduce[] potential alliances between” Latina feminists and mainstream feminists); Uttal, *supra* note 25, at 42-45 (discussing the limited inclusion of women of color in feminist discourse as tokenism by way of representation, and also lacking the “analytic inclusion of race, class and gender” in feminist efforts).

²⁷ See generally RUFUS P. BROWNING ET AL., *PROTEST IS NOT ENOUGH: THE STRUGGLE OF BLACKS AND HISPANICS FOR EQUALITY IN URBAN POLITICS* (1984) (describing historical process of political incorporation of Blacks and Latinos).

²⁸ Nonviolent responses to White sponsored and White perpetrated violence are exemplified in this century’s anti-war movements in the United States. Similar examples of nonviolent responses to discrimination can be found in a review of the 1960s civil rights movement and the 1970s feminist struggles. There are excellent documentaries presenting the acrimonious nature of the struggle and the extent of the violence, as well as efforts by persons of all races and cultural backgrounds to avoid or reduce opportunities for violent encounters. See, e.g., *THE EYES ON THE PRIZE: CIVIL RIGHTS READER* (Clayborne Carson et al. eds., 1991); *MI PUERTO RICO* (Ortiz, Simon Productions 1995); *EYES ON THE PRIZE: AMERICA AT THE RACIAL CROSSROADS, 1965-85* (Blackside, Inc. 1989) (eight-part series); *EYES ON THE PRIZE: AMERICA’S CIVIL RIGHTS YEARS, 1954-65* (Blackside, Inc. 1986) (six-part series).

²⁹ See, e.g., MARY FRANCES BERRY, *BLACK RESISTANCE WHITE LAW: A HISTORY OF CONSTITUTIONAL RACISM IN AMERICA* (1971) (detailing history of violence against Blacks directly and against Black resistance to racism and discrimination).

³⁰ Thomas J. Lueck, *New York Ranks High in Housing Bias*, N.Y. TIMES, Nov. 3, 1991, § 10 (Real Estate), at 1 (revealing the large numbers of housing

speech and violent, often fatal, actions targeting people of color are commonplace in neighborhoods, workplaces and schools.³² There are numerous news accounts of Asians and Latinos brutalized and murdered by angry Whites who demanded that such "foreigners" leave the United States.³³

bias cases filed in New York, several of which include violent incidences).

³¹ See generally *Part II Migration and Labor*, in INTRODUCTION TO CHICANO STUDIES (Livia Isauro Duran & H. Russell Bernard eds., 2d ed. 1982) (containing several articles on the histories of Chicano and migrant labor in the United States); Elaine Woo, *Affirmative Action: Meritocracy or Equal Opportunity Myth*, L.A. TIMES, Apr. 30, 1995, at A1 (discussing the inaccurate yet entrenched belief among many Whites that United States employment, with the exception of affirmative action programs, has been based historically on merit solely, and in contrast citing to employment preferences that benefit Whites).

³² It is impossible to list all the numerous violent incidences; instead, this Article includes only a sampling. See, e.g., William Glaberson, *The Bensonhurst Case: Bensonhurst Defendant is Found Guilty*, N.Y. TIMES, May 18, 1990, at A1 (describing murder of 16-year-old African American male by 19-year-old White male in Bensonhurst, Brooklyn); Lynda Richardson, *61 Acts of Bias: One Fuse Lights Many Different Explosions*, N.Y. TIMES, Jan. 28, 1992, at B1 (detailing surge in racially-motivated incidents, including retaliatory acts); Roger Wilson, *Repairing Race Relations: Racial Problems in the U.S.*, SPECTRUM: J. STATE GOV., Summer 1993, at 8-9 (discussing the correlation between increased violence and segregation based on race, class and economic status); *At [Staten Island] School, Lessons in Curbing Racial Strife*, N.Y. TIMES, May 1, 1988, at 60 (discussing violence among students in public schools); *In 2 Other Assault Cases, No Resolution Yet*, N.Y. TIMES, Oct. 26, 1987, at B3 (describing attack on two Latino youths by two White youths in Queens, New York).

³³ See generally L.A. Chung, *Bay, U.S. Focus on Hate Crimes*, S.F. CHRON., June 20, 1992, at A14 (discussing anti-Asian violence and Asian community response); Esther Iverem, *Forum on Racism in New York Opens with Tales of Violence*, N.Y. TIMES, June 14, 1987, at A47 (providing testimonies of violence); George James, *Reports of Racial Assaults Rise Significantly in New York City*, N.Y. TIMES, Sept. 23, 1987, at B1 (reporting an increase in racial assaults); Donatella Lorch, *Suspect Is Killed in Struggle with 5 Officers in Queens*, N.Y. TIMES, Feb. 6, 1991, at B3 (reporting a Latino male killed in alleged chokehold during struggle with five police officers in Queens); James C. McKinley, Jr., *Officer Cleared in Killing of Auto Thief*, N.Y. TIMES, Feb. 1, 1991, at B3 (reporting that Brooklyn grand jury refused to indict police officer accused of shooting a Latino in the back); David Treadwell, *Racial Tension Haunts a "Nice Neighborhood,"* L.A. TIMES, Sept. 2, 1989, at 1 (discussing racial tensions in Bensonhurst and residents' views on racially-motivated violence); *Bigotry's*

Gender-based violence has similarly infected society, making feminists and women continued targets of violence.³⁴ However, gender-based violence has historically occurred within a racialized and biased social and political environment. Women of color have often experienced gender-based violence which is characterized by actions which are as completely informed and developed by notions and beliefs based on race, ethnicity and national origin as they are on gender. For example, until the late nineteenth century, rape of a non-White woman was not a crime.³⁵ In the decades following the Civil War, rape was a violent specter for both women generally, and for African American men, who were often lynched after being accused of raping a White woman.³⁶ As activist Ida B. Wells noted, rape was an example of how violence was a tool of both gender and racial oppression: “[W]hite men used their ownership of the body of the [W]hite female as a terrain on which

Expanding Umbrella, L.A. TIMES, June 21, 1992, at M6 (indicating the increase of anti-Asian violence).

People of color must also be suspect of law enforcement personnel since there are numerous incidences of the use of excessive force by police officers, several resulting in death. *See, e.g.*, José Luis Morin, *Police Brutality and the Puerto Rican Community*, in TOWARDS A PUERTO RICAN-LATINO AGENDA FOR NEW YORK CITY, INSTITUTE FOR PUERTO RICAN POLICY, INC. 177, 177 (1989) (listing several Latinos killed and brutalized by police officers in New York City, including: Evelyn Rivera and Lisa Jimenez, beaten by transit police officers who called them by derogatory names, referring to their sexual orientation; Alberto Flores, in whose case the police officers were exonerated and Flores indicted despite videotape evidence of his 1987 beating; Arturo Lana, killed in 1987; and Juan Rodríguez, beaten to death by police officers in his home in 1988).

³⁴ *See generally infra* notes 37-41 and accompanying text.

³⁵ *See, e.g.*, *George v. State*, 37 Miss. 316 (1859); *see also* A. Leon Higginbotham, Jr. & Anne F. Jacobs, *The “Law Only as an Enemy”: The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Criminal Laws of Virginia*, 70 N.C. L. REV. 969, 1056 (1992) (noting that the rape of Black women was not a crime in Mississippi, Missouri and Virginia before the Civil War). As Angela P. Harris stated, rape “was something that only happened to [W]hite women; what happened to [B]lack women was simply life.” Harris, *supra* note 19, at 599.

³⁶ Indeed, in contrast to the lack of sanctions for rape of non-White women, the rape of a White woman was historically considered the most heinous offense. At times, the law has required that Blacks convicted of raping White women be castrated. Higginbotham & Jacobs, *supra* note 35, at 1055-60.

to lynch the [B]lack male.”³⁷ Women of color have been targets of sterilization, and widespread sterilization abuse has been a hallmark of this century as a method of population and social control.³⁸ Puerto Rican women, in fact, have the highest global rate of sterilization: thirty-five percent.³⁹ These high sterilization rates reflect, to a significant extent, the coercive practices applied to women of color which informed sterilization practices.⁴⁰ As discussed above, feminists in the 1970s articulated the systemic role played by violence against women in the form of rape and domestic violence in the subjugation of women.⁴¹ As the passage of the VAWA makes clear, violence against women in the form of violent crime continues to escalate since it was first identified as a major problem.

Violence against women by their intimate partners, spouses and ex-partners has been met with widespread rejection and denial.⁴²

³⁷ See Harris, *supra* note 5, at 600 (citing IDA B. WELLS, SOUTHERN HORRORS: LYNCH LAW IN ALL ITS PHASES (1892)).

³⁸ Darci Elaine Burrell, *The Norplant Solution: Norplant and the Control of African-American Motherhood*, 5 UCLA WOMEN'S L.J. 401, 405-25 (1995) (discussing use of sterilization techniques to control African American women's reproduction); Roberts, *supra* note 19, at 1442-44 (discussing historical sterilization abuse of women of color, in particular Black women); Dick Grosboll, Note, *Sterilization Abuse: Current State of the Law and Remedies for Abuse*, 10 GOLDEN GATE U. L. REV. 1147, 1152-53 (1980) (providing examples of sterilization abuse).

³⁹ Grosboll, *supra* note 38, at 1153 n.31 (citing COMMITTEE TO END STERILIZATION ABUSE: THE FACTS 4 (1976)).

⁴⁰ Burrell, *supra* note 38, at 405-25; Roberts, *supra* note 38, at 1442-44.

⁴¹ See Catherine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS: J. WOMEN CULTURE & SOC'Y 635, 645 (1983) (questioning whether traditional liberal theories are “adequate to the feminist critique of rape and battery as systemic and to the role of the state and the law within that system”).

⁴² See Schneider, *supra* note 6, at 983-85 (describing institutional and individual denial of battering). Although the focus of this Article is the traditional paradigmatic heterosexual relationship and domestic violence legislation, it is critical to recognize that homosexual partners, and violence within same-sex couples, have been either completely ignored or similarly “privatized.” See Mary Eaton, *Abuse By Any Other Name: Feminism, Difference, and Intralesbian Violence*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE, *supra* note 19, at 195, 198-200, 215-20 (discussing the applicability of feminist

Indeed, public rejection and denial of the existence and extent of domestic violence has facilitated the continued privatization of actions which would be treated as criminal if they occurred between strangers. Thus, violence between intimate partners has flourished, secure in the protection afforded to other actions taken within a private context.

It has been part of the feminist agenda to de-privatize, and discuss in public forums such violence. Despite the misnomer of "domestic violence," feminists and anti-violence activists have succeeded in publicizing violence which traditionally has been conducted within private relationships.⁴³ In this context, the struggle for the elimination of violence against women, by their intimate current and former partners, can be, and must be, an area for collaborative effort between civil rights activists and feminists. The focus should be on commonalities and the overlap of issues and concerns.

The notion of violence as a vehicle of systemic oppression is a common aspect of both civil rights and feminist social critiques. Violence against women is one basis for women's unequal economic and political status. Violence—"public" and "private," racial and gender-based—not only deters individuals from gaining equal access to opportunity, it demeans the social democratic structure as a whole. Anti-violence legislation and legal initiatives are indeed a natural outgrowth of the civil rights and feminist struggles for just treatment under the law generally, and particularly for equal access to political power.

C. Current Battlegrounds: The Political Agendas of People of Color and Women at a Crossroads

Reconsideration and reformulation of traditional civil rights and feminist theories and strategies are of paramount importance to the survival and vitality of both these movements. They are at a

remedies to lesbian abuse and contextualizing intimate violence between lesbians).

⁴³ See Schneider, *supra* note 6, at 979-82 (noting that 20 years of work by the battered women's movement has resulted in publicizing domestic violence and the issues faced by "battered women").

doctrinal and political crossroads, coming under attack from critics within and outside of the two movements.

In recent years, civil rights and feminist theories have been criticized as outdated, outmoded, a failed attempt at political and social reform or, at best, unresponsive to the current political and social conditions of persons living in the United States.⁴⁴ Indeed, both have been charged with failing to represent the majority of their constituents.⁴⁵ Debates over the ability of these movements to represent their respective target constituencies are frequent and often peppered with vitriolic hyperbole.⁴⁶

Political and physical attacks on civil rights and feminist activists, and sometimes against women and people of color generally are at palpably high levels,⁴⁷ and reflect a fear that

⁴⁴ See, e.g., Jennifer Gonnerman, *Angry White Women: A Right-Wing Women's Group Sets Out to Crush Feminism*, VILLAGE VOICE, July 11, 1995, at 17 (describing anti-feminist women's group and its opposition to the VAWA and affirmative action); see generally NICHOLAS DAVIDSON, *THE FAILURE OF FEMINISM* (1988) (arguing that the feminist movement destroys any chance for social justice); Derrick Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976) (discussing the failures of school desegregation litigation and the NAACP and NAACP Legal Defense Fund's approach to education of Black students, as well as the role of civil rights lawyers in the struggle for equality).

⁴⁵ See generally DAVIDSON, *supra* note 44; ELIZABETH FOX-GENOVESE, "FEMINISM IS NOT THE STORY OF MY LIFE": HOW TODAY'S FEMINIST ELITE HAS LOST TOUCH WITH THE REAL CONCERNS OF WOMEN (1996).

⁴⁶ See DAVIDSON, *supra* note 44, at 304; Camille Paglia, *Rape and Modern Sex War*, in SEX, ART, AND AMERICAN CULTURE 49, 49-54 (1992) (charging feminist movement with propagating "sugar-coated nonsense" regarding rape); KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR AND FEMINISM ON CAMPUS* 51-84 (1993) (charging the feminist movement with overdramatizing and presenting extreme positions on rape); see generally LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC ASSIMILATION* (1991).

⁴⁷ See, e.g., Judith Gaines, *Domestic Violence Rate Alarmingly Static*, BOSTON GLOBE, Oct. 29, 1995, at 21 (citing an increase in domestic violence arrests as evidenced by U.S. Bureau of Justice statistics which indicate that 70% of husbands arrested for assaulting their wives were charged with first degree murder, and 87% pled guilty or were convicted); John Milne, *Clinics Are Warned About N.H. Man*, BOSTON GLOBE, Mar. 11, 1995, at 68 (discussing violence at women's health clinic); Charles M. Sennott, *After Bombings, America Faces Up to Prejudice*, BOSTON GLOBE, June 21, 1995, at 1 (describing racially

traditional power dynamics are finally, gradually shifting. For example, angry mobs picket women's health clinics and, under the guise of "right to life" rhetoric, violent acts—including murder—are encouraged and, not surprisingly, proliferate against the supporters of women's right to choose.⁴⁸ Indeed, aggressive attacks on feminism and civil rights advocacy are international in expanse and have escalated in the past few years.⁴⁹

Attempts to eradicate certain entitlement programs and affirmative action policies, in part the result of civil rights and feminist struggles, have placed women in the United States, particularly poor women and women of color, under both racial- and

motivated violence following the 1995 Oklahoma City bombing of a federal building).

⁴⁸ See, e.g., John Milne, *supra* note 47, at 68 (discussing violence by clinic protestor). In the last few years, abortion opponents have become particularly hostile to women and their medical providers at clinics. In December 1995, this violent opposition was callously expressed in the actions of John Salvi, found guilty of shooting indiscriminately at an abortion clinic in Massachusetts, resulting in the deaths of Shannon Lowney and Lee Ann Nichols, clinic receptionists. Fox Butterfield, *Man Guilty of 2 Murders in Storming Abortion Sites*, N.Y. TIMES, Mar. 19, 1996, at A12. These opponents have also attacked the doctors who provide abortion services at clinics. Even going so far as murdering medical providers, as illustrated by the fatal shootings of Dr. David Gunn in 1993 by Michael Griffin, and Dr. John Bayard Britton and his escort James H. Barrett in 1994 by Paul Jennings Hill. Tom Kuntz, *Conversations/Paul Hill: From Thought to Deed: In the Mind of a Killer Who Says He Served God*, N.Y. TIMES, Sept. 24, 1995, § 4 (Week in Review), at 7; Larry Rohter, *Man Guilty of Murder in Death of Abortion Doctor*, N.Y. TIMES, Mar. 7, 1994, at A15. While many abortion opponents have condemned these violent attacks, too many, including leaders within the anti-abortion movement, have embraced and sympathized with the accused and convicted murderers. See Diane Hirth, *Abortion Extremists Justify Their Violence*, SUN-SENTINEL (Ft. Lauderdale), July 24, 1995, at 1A (describing pro-life activists who have embraced violence as a legitimate oppositional response to abortion rights, and stating that "most [of them] are [W]hite men, all are fundamentalist Christians," and that "many live off donations to the cause").

⁴⁹ Michael Janofsky, *Skinhead Violence Is Worldwide and Growing*, N.Y. TIMES, June 28, 1995, at A11 (describing the rise of violent skinhead movement in Europe and the United States over the past two decades); Scott Kraft, *Is Racist Rhetoric Turning into Europe's Reality?*, L.A. TIMES, Apr. 18, 1995, at 1 (discussing the rise of anti-immigrant violence in Europe).

gender-based attack. For example, legislative and popular challenges to long-established state- or federally-funded programs that largely serve women seek the elimination of federal job training programs, public and private affirmative action initiatives, as well as entitlement programs.⁵⁰ Supporters of these agendas come from both the Republican and Democratic political parties.⁵¹ They assert that a redefinition of government is necessary for the survival of United States economic and political systems.⁵² This process is marked by the downsizing of government and the elimination of government services without regard for—and sometimes with hostility toward—women and the resulting impact on their lives.⁵³

⁵⁰ These legislative proposals would require recipients to participate in work programs, place caps on entitlements by limiting program participation to a designated number of years, place caps on the number of permissible recipients, and even deny benefits for children born after a parent has enrolled in the Aid to Families with Dependent Children (“AFDC”) program. See, e.g., Individual Accountability Act, S. 842, 104th Cong., 1st Sess. (1995); Personal Responsibility Act of 1995, H.R. 4, 104th Cong., 1st Sess. (1995); see also Lucie E. White, *No Exit: Rethinking “Welfare Dependency” from a Different Ground*, 81 GEO. L.J. 1961, 1961-63 & nn.2-8 (1993) (describing changes in welfare programs in Wisconsin, Michigan and California); Jason DeParle, *Better Work Than Welfare, But What If There’s Neither?*, N.Y. TIMES, Dec. 18, 1994, § 6 (Magazine), at 44 (describing Mary Anne Moore’s struggle to survive at a low-paying job, her tortured history to make ends meet during and between her periods as an AFDC recipient and as a low-wage worker, and describing political efforts to end all entitlements and alternatively to severely restrict entitlements).

⁵¹ Carla M. da Luz & Pamela C. Weckerly, *Will the New Republican Majority in Congress Wage Old Battles Against Women?*, 5 UCLA WOMEN’S L.J. 501 (1995) (describing the potential adverse impact on women caused by the Contract with America, the Republican sponsored welfare reform legislation, and President Bill Clinton’s welfare reform bill); DeParle, *supra* note 50, at 42 (discussing the Republican and Democratic efforts to limit entitlement benefits).

⁵² da Luz & Weckerly, *supra* note 51, at 526 (noting that the Contract with America’s response to “illegitimacy, crime, illiteracy, and more poverty [is] to ‘change this destructive social behavior by requiring welfare recipients to take personal responsibility for the decisions they make’ and thus to ‘reduce illegitimacy, require work, and save taxpayers money’”) (citing NEWT GINGRICH ET AL., CONTRACT WITH AMERICA 65 (1994)).

⁵³ See da Luz & Weckerly, *supra* note 51, at 511-30.

Consideration of women's needs might call for the modification or redirection of government programs, rather than their wholesale elimination. Indeed, one recent study has shown that as many as half of all women on welfare may be battered.⁵⁴ Many of these women depend on job training and entitlement programs to free themselves from their abusers.⁵⁵ Others, however, are unable to utilize programs designed to help them enter the job market because of interference by their batterers.⁵⁶ Facts such as these call for modification, rather than elimination, of such programs to account for the particular difficulties many women face in attaining economic independence, not the least of which is violence.

Demands to end affirmative action and the scaling-back of various entitlement programs, are similarly marked by gendered and racialized notions about relative roles and group market contributions.⁵⁷ As in the debates about the elimination of entitlement programs on which women depend, calls for the discontinuance of affirmative action programs are devoid of analyses of the impact on women's economic status. The absence of such analysis in the affirmative action context perpetuates the myth that affirmative action programs are strictly designed for African American men. This is a clearly inaccurate representation of affirmative action initiatives and their beneficiaries, since significant numbers of

⁵⁴ JODY RAPHAEL, DOMESTIC VIOLENCE: TELLING THE UNTOLD WELFARE-TO-WORK STORY: A TAYLOR INSTITUTE REPORT 3-4 (1995).

⁵⁵ *Id.*; see also Barbara Ehrenreich, *Battered Welfare Syndrome*, TIME, Apr. 3, 1995, at 82.

⁵⁶ Ehrenreich, *supra* note 55, at 82.

⁵⁷ Burrell, *supra* note 38, at 425-33 (historical discussion of the social control of African American women through welfare policies based on racialized stereotypes); Thomas Ross, *Innocence and Affirmative Action*, 43 VAND. L. REV. 297, 299-310 (1990) (claiming that the rhetoric of the innocent White victim injured by affirmative action policies is neither "innocent" nor untainted by racism); Catherine Gewertz, *Work Force Diversity; Bias: It's Still a Fact of Business Life*, L.A. TIMES, May 16, 1994, at 4 (discussing and providing examples of the continued existence of discrimination at the workplace, based on race and gender stereotypes); *Affirmative Action: An American Dilemma*, BOSTON GLOBE, May 21-25, 1995, at 1 (five-part series) (reporting on attitudes about affirmative action and the impact of affirmative action on the workplace environment); see generally Louis Uchitelle et al., *The Downsizing of America*, N.Y. TIMES, Mar. 3-9, 1996, at A1 (seven-part series).

women have made economic gains under affirmative action programs.⁵⁸ Similarly, as the battle lines are drawn on the issue of entitlements for single parents, recipients are cast almost without exception as female, young, irresponsible, often Black and/or Latina, and who, moreover, must be pushed into the work force.⁵⁹ Again, these characterizations are inaccurate and part of a larger agenda which portrays individuals who are the targets of social service cuts as marginal noncontributors.

One result of these political attacks on women and people of color has been the development and implementation of cooperative strategies by civil rights and feminist activists.⁶⁰ The progressive

⁵⁸ Female labor force participation has increased greatly in the past decade and is projected to continue to increase. For example, White women had a 51.2% participation rate in 1980, which increased to 56.4% by 1988 and is projected to increase to 62.9% by the year 2000. For African American women, the numbers are 53.2% to 58% to a projected 62.5%. For Latinas, it is 47.4% to 53.2% to a projected 59.4%. NATIONAL COUNCIL OF LA RAZA, DIVERSITY IN THE WORKPLACE: BARRIERS AND OPPORTUNITIES FROM AN HISPANIC PERSPECTIVE 18 tbl. 625 (July 1991). White women constituted 83.3% of those in professional specialty occupations in 1990, compared with only 9.1% for African American women, and 4.1% for Latinas. DEIDRE MARTINEZ, NATIONAL COUNCIL OF LA RAZA, HISPANICS IN THE LABOR FORCE: A CHARTBOOK 4 (Dec. 1993).

⁵⁹ Burrell, *supra* note 38, at 430-33 (arguing that African American women are the central focus of dissatisfaction with the Aid to Families with Dependent Children program). A significant number of recipients of Aid to Families with Dependent Children, the largest federal subsidy for poor single women with children, are White. In fact, in 1991, 5.95 million White persons received AFDC or General Assistance, compared with 4.84 million Blacks and 2.17 million Latinos, and also, 10.9 million Whites, compared with 7 million Blacks and 3.67 million Latinos participated in the Food Stamps program. U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, THE NATIONAL DATA BOOK 379 tbl. 591 (1995); Marlene Cimon, *Myths Blur the Realities of Welfare*, L.A. TIMES, Jan. 29, 1995, at A1 ("The typical welfare recipient is [W]hite, has fewer than two children, often lives in a rural area or 'mixed' income neighborhood . . .").

⁶⁰ Examples may be drawn from recent advocacy efforts surrounding anti-violence legislation and reproductive rights litigation, including: the coalition headed by the NOW Legal Defense Fund for the successful passage of the VAWA; and the coalition of feminists coordinated by the Center for Constitutional Rights in New York City, which included reproductive rights activists and women of color, for purposes of developing and implementing a

ideologies of civil rights advocacy and feminism have coalesced and flourished globally in the international arena, where women's rights are receiving increasing attention and are being treated as human rights.⁶¹ This collective work, and the coalescing of resources for joint initiatives in furtherance of complementary

political and educational strategy in preparation for the Supreme Court oral arguments in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

⁶¹ For example, in 1993, the Vienna Declaration and Programme of Action was promulgated at the World Conference on Human Rights held in Vienna. U.N. Doc. A/CONF.157/24 (1993), 32 I.L.M. 1661 (1993); see also Elizabeth F. Defeis, *Women's Human Rights: The Twenty-First Century*, 18 FORDHAM INT'L L.J. 1748, 1749 (1995) (describing the Vienna Declaration and Programme of Action as "expressly recogniz[ing] that the human rights of women are an inalienable, integral, and indivisible part of universal human rights"). Even the international human rights movement, however, has failed to fully address the concerns of women in a global framework. See Celina Romany, *Woman as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87 (1993).

The most recent example of the strength of this global feminist movement is the adoption of an international agenda for the economic improvement of women. The Platform for Action, adopted at the United Nations Fourth World Conference on Women, held in September 1995, pronounces women's economic improvement as a primary vehicle for ensuring women's equality globally. *Beijing Declaration and Platform for Action, Adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace*, held in Beijing, China, Sept. 15, 1995 (available on the Internet at: gopher://gopher.undp.org:70/00/unconfs/women/off/a—20.en). The momentum and force which today characterizes the global movement for the improvement of women's economic, social and political status, at home and outside their family environs, is evident in the Platform mission statement, which states:

Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace. A transformed partnership based on equality between women and men is a condition for people-centered sustainable development. A sustained and long-term commitment is essential, so that women and men can work together for themselves, for their children and for society to meet the challenges of the twenty-first century.

Id. at ch. I, ¶ 1; see Andrew M. Deutz, *Gender and International Human Rights*, 17 FLETCHER FORUM WORLD AFF. 33 (1993); Pamela Goldberg & Nancy Kelly, *International Human Rights and Violence Against Women*, 6 HARV. HUM. RTS. J. 195 (1993).

agendas, are a natural progression of the struggles of the civil rights movement and the feminist movement. Both have used similar strategies in furtherance of their respective goals for equality and opportunity. Arguably, both have learned from one another's successes and mistakes. Despite a sometimes adversarial and contentious history of joint accommodation, more common ground than discord exists between these two movements.⁶²

II. THE VIOLENCE AGAINST WOMEN ACT

A. *When Civil Rights Anti-Discrimination Doctrine and Feminist Theory Meet*

Not surprisingly, introduction into mainstream society of the theoretical ideologies and particular experiences underlying civil rights and feminist movements has been challenging. Only after much advocacy, education, lobbying and politicking within various communities, and at the federal and local government levels, have women succeeded in promoting and implementing an anti-violence agenda.⁶³ The legislative history of the VAWA is revealing in this respect because it is characterized by more than the usual hesitance

⁶² Lisa C. Ikemoto, *Furthering the Inquiry: Race, Class and Culture in the Forced Medical Treatment of Pregnant Women*, 59 TENN. L. REV. 487, 508-17 (1992) (arguing that feminist inquiry extends beyond gender to race, class, and culture); see also DAVIS, *supra* note 13, *passim* (discussing the history of racism within the women's movement); GIDDINGS, *supra* note 11, at 349-57 (noting that currently there are many more parallels between White and Black women); Crenshaw, *supra* note 11, at 140, 166-67 (urging feminist and anti-racist activists to refocus efforts on the most disadvantaged as a strategy for responding to the issues of Black women); Harris, *supra* note 5, at 608-16 (arguing that multiple consciousness as a methodology can bring activists and scholars closer towards responses to various experiences); Catherine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13, 18-22 (1991) (arguing that all White women are not the same and they do have their own stories of oppression, and that subjugation is experienced by all women).

⁶³ Goldfarb, *supra* note 4, at 392-93; see also Elizabeth M. Schneider, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 427-28, 433-34 (1996).

and resistance to new legislation.⁶⁴ An examination of the initial opposition to the VAWA lays bare gendered notions at that opposition's core. Moreover, this legislative history signals potential danger areas in the enforcement of the VAWA of particular concern to women of color.⁶⁵

For example, while the VAWA provisions permitting enhanced sentencing for sex crimes was well received,⁶⁶ there was less enthusiasm for, and at times direct opposition to, the section creating a new civil rights cause of action⁶⁷ and the interstate enforcement of domestic violence provision.⁶⁸ While objections to these provisions were clothed in the language of legal discourse and concerns about the analytical framework of the legislation and its constitutionality,⁶⁹ they also reflected resistance to the break from traditional notions of women's status.⁷⁰

The VAWA's recognition and provisions for enhanced sanctions on sex crimes⁷¹ was perhaps more easily acceptable because it mirrors traditional responses to rape that seek to protect the sexual purity of women by punishing transgressors of that protected female sexual image.⁷² In contrast, the civil rights remedy⁷³ and the interstate enforcement provision⁷⁴ strike at the very heart of traditional conceptions of female power and subjugation because they remove acts of violence against women by intimate partners

⁶⁴ Goldfarb, *supra* note 4, at 392-93.

⁶⁵ See Goldfarb, *supra* note 4, at 392-93.

⁶⁶ 42 U.S.C. § 13702 (1994).

⁶⁷ 42 U.S.C. § 13981(c) (1994).

⁶⁸ 42 U.S.C. § 14037 (1994).

⁶⁹ See, e.g., David Frazee, *Gender-Justice Break: A Plain-English Guide to the New Civil Rights Law Against Violence Against Women*, ON THE ISSUES, Fall 1995, at 42-43 (noting that the Judicial Conference of the United States opposed the VAWA's civil-rights provision).

⁷⁰ Goldfarb, *supra* note 4, at 392.

⁷¹ 42 U.S.C. § 13702 (authorizing Federal Truth in Sentencing Incentive Grants to states that meet federally established sentencing and incarceration standards); 28 U.S.C. § 994 (1994) (amending sentencing guidelines to allow sentencing commission to enhance sex offender penalties for federal sex crimes).

⁷² Schneider, *supra* note 63, at 431.

⁷³ 42 U.S.C. § 13981(c).

⁷⁴ 42 U.S.C. § 14037.

from the protected space of the private home, and subject them to public scrutiny and potential civil liability.⁷⁵

Criminal sanctions for domestic violence are the result of efforts by feminists to eradicate the "public-private distinction"⁷⁶ that until recently protected abusers and their actions from public scrutiny.⁷⁷ Civil sanctions for violence against women, such as civil protective orders, tort claims, and now the VAWA civil rights provision,⁷⁸ have roots in both civil rights and feminist struggles. The civil rights movement brought about public scrutiny of and civil remedies for discriminatory behavior through passage and implementation of the Civil Rights Act of 1964,⁷⁹ Civil Rights Act of 1991⁸⁰ and the Bilingual Education Act.⁸¹ Feminists recognized both stranger or "public," as well as intimate or "private" violence against women as stemming from sexism.⁸² The VAWA combines the contributions of both civil rights activists and feminists. Subjecting intimate partners to federal penalties and liabilities, similar to those imposed on a stranger who commits an act of violence against a woman, is a practical consequence of the contributions and collaboration of feminism and civil rights activism,⁸³ signalling the potential for the continued collaboration of these movements in ensuring that the VAWA is effective in redressing, and ultimately ending, violence against women.

⁷⁵ Schneider, *supra* note 63, at 433-34; *see also* Schneider, *supra* note 6, at 985-94 (arguing that the implementation of civil and criminal penalties for violence against women and law enforcement has transferred issues of violence against women from the private into the public sphere).

⁷⁶ Schneider, *supra* note 6, at 980-81.

⁷⁷ Schneider, *supra* note 6, at 976-81.

⁷⁸ 42 U.S.C. § 13981.

⁷⁹ 42 U.S.C. §§ 2000a-2000h-6 (1994).

⁸⁰ Pub. L. No. 102-166, 105 Stat. 107 (codified as amended in scattered sections of 2, 16, 29 and 42 U.S.C. (1994)).

⁸¹ Pub. L. No. 89-10, 102 Stat. 274 (codified as amended in scattered sections of 20 U.S.C. (1994)).

⁸² *See supra* notes 71-75 and accompanying text.

⁸³ The VAWA also imposes criminal sanctions against intimate partners and ex-partners who commit violent acts proscribed under the VAWA. 18 U.S.C. §§ 2261-66 (1994).

*B. The VAWA As Gender Conscious-Gender Responsive Civil Rights Legislation*⁸⁴

The passage of the VAWA is an important victory for the combined efforts of civil rights and feminist movements, but it is only the beginning of a more complex set of historical events. The most telling aspects of the story behind the VAWA will ultimately be defined and developed in the implementation and enforcement of that legislation. This section explores the potential for activists and theorists from both movements to effectively continue their collaborative efforts, and highlights some of the problems they may encounter in making the VAWA's promises a reality.

The VAWA provides a unique opportunity for the fusion of the visions of civil rights and feminist struggles. With the establishment of a new cause of action in the VAWA, which provides a civil rights remedy,⁸⁵ the opportunity for a civil action based on gender violence would appear at first glance to be the appropriate legal and analytical framework for such fusion. Nevertheless, it is more likely that the civil rights provision provides little practical relief from the complex multiple experiences of sexism, and race, ethnic and culture-based discrimination endemic to the lives of women of color. When considering those provisions of the VAWA which truly incorporate a gender responsive civil rights approach to violence against women, it is those sections which speak directly to the issues of women of color which reflect multiple consciousness. Moreover, it is not solely particular VAWA provisions working in isolation which make the legislation unique and uniquely applicable to women of color. Rather, it is the various sections of the VAWA working in tandem which make the VAWA a gender conscious-gender responsive civil rights law; one which provides legal recourse to all women survivors of domestic violence, regardless of race, ethnicity, culture and/or language.

⁸⁴ I have previously described several of the VAWA sections discussed in the next two sections. See *Puerto Rico's Domestic Violence Law*, *supra* note 6, at 105-17. The discussion here follows directly from the prior writing, and articulates my ideas regarding the applicability of the VAWA to women of color.

⁸⁵ 42 U.S.C. § 13981.

One of the primary aspects of the legislation is its ambitious attempt to respond to the particular ways women experience violence.⁸⁶ First, it recognizes the prevalence of violence between intimate partners,⁸⁷ and, because it applies to former intimate partners,⁸⁸ it also recognizes that violence does not necessarily terminate when the relationship ends.⁸⁹ Second, the VAWA avoids making the all too common mistake of judging women who stay in violent relationships by adversely characterizing them as "failing" to take aggressive steps to curtail the batterer's conduct, or otherwise blaming women for their abusers' conduct.⁹⁰ Rather, the

⁸⁶ For a fuller discussion of the VAWA provisions described herein, see *Puerto Rico's Domestic Violence Law*, *supra* note 6, at 105-17.

⁸⁷ One estimate claims that violence against women by intimate partners and spouses occurs at a rate of three to four million per year. Nancy Kathleen Sugg & Thomas Inui, *Primary Care Physicians' Response to Domestic Violence: Opening Pandora's Box*, 267 JAMA 3157, 3157 (1992).

⁸⁸ See 42 U.S.C. § 10408 (1994) (application to both present and former cohabitants).

⁸⁹ See Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q., 273, 274 & nn.12-13 (1995) (stating that domestic violence escalates when the batterer learns or believes that the woman is going to leave, and noting that a significant percentage of divorced and separated women are battered) (citing LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 7 (1984); CAROLINE WOLF HARLOW, U.S. DEP'T. OF JUSTICE, *FEMALE VICTIMS OF VIOLENT CRIME* 5 (Jan. 1991)).

In fact, women are at greatest risk of death or serious injury after they leave an abusive partner. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 64-65 (1991) (stating that half of the women who leave an abuser are harassed or attacked further by their abuser, and citing a study in which more than half of the male spouses who killed their wives did so during a separation).

⁹⁰ The identification of women as the cause of their own problems in domestic violence cases continues to be a prevalent reaction to women who are involved in violent intimate relationships. This misperception and lack of information regarding the complexity of reasons why women stay in violent relationships is detrimental to the reformation of legal policy. See *Puerto Rico's Domestic Violence Law*, *supra* note 6, at 97 (discussing the Puerto Rican law enforcement community's tendency to blame women for the low rates of prosecution of batterers); Roberta L. Valente, *Addressing Domestic Violence: The Role of the Family Law Practitioner*, 29 FAM. L.Q. 187, 191 (1995) (asserting one reason battered women stay in violent relationships is because the batterer

VAWA provides for the establishment of programs and law enforcement strategies that will, at least in theory, create an environment in which women can feel they have real options to negotiate the violence.⁹¹ If these programs and strategies are effectively established and enforced, women will have more resources, such as shelters and support services, and police will be better able to respond appropriately to domestic violence with education and enhanced resources.⁹²

Another way in which the VAWA incorporates the experiential and doctrinal foundations of civil rights and feminist antidiscrimination theory and activism is by providing for the installation and integration of programs and services responsive to the different situations faced by women of color.⁹³ This ensures the

may be the only means for the woman's survival).

Indeed, several authorities have stated that language describing female survivors of domestic violence as "suffering" from a "syndrome" contributes to society's tendency to blame women for their own abuse and resistance to adequately calling batterers to account for their actions. See Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993); Evan Stark, *Re-Presenting Woman-Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973 (1995).

⁹¹ See, e.g., 42 U.S.C. §§ 10410 (grants for state domestic violence coalitions); 10416 (national domestic violence hotline grant); 10418 (demonstration grants for community initiatives); 10607 (law enforcement provided services to victims); 13931 (grants for capital improvements to prevent crime in public transportation). See *Puerto Rico's Domestic Violence Law*, *supra* note 6, at 107-13, 117 (describing the VAWA sections providing for a national domestic violence hotline, interstate enforcement, financial support for community programs on domestic violence, data collection on domestic violence and self petitioning for immigrant women).

⁹² Numerous critics and studies have described the resistance of law enforcement personnel to the vigorous implementation of domestic violence laws and strategies. See, e.g., *Domestic Violence Against Latinas*, *supra* note 6 at 243-51 & nn.67-74, 92-95 (describing and citing studies, articles and reports on the resistance of police, prosecutors and judges to anti-domestic violence legal strategies); *Puerto Rico's Domestic Violence Law*, *supra* note 6, at 94-99 (describing documented resistance of law enforcement officials to the implementation of Puerto Rico's 1989 domestic violence legislation).

⁹³ See, e.g., 42 U.S.C. § 10402(a)(2)(C) (conditioning award of federal grants on states' plans to address needs of "populations undeserved because of

applicability of particular VAWA projects to a diverse population of women, and also enhances the VAWA's overall vitality. For example, in several sections the VAWA mandates the inclusion of representatives from various communities, including communities of color, in the development and strategic planning of VAWA mandated or facilitated enforcement, education and research projects.⁹⁴ Thus, the VAWA discreetly, but effectively, recognizes that women of color have available to them different and often fewer options than do many White women because of their race, ethnicity, culture and language.

The experiences of women of color as survivors of domestic violence often differ from those of other women, therefore, *a fortiori*, the development and implementation of anti-violence strategies as applied to women of color must reflect those differences.⁹⁵ The VAWA recognizes that within communities of color there are different issues and discreet culturally-based concerns. For example, law enforcement and prosecution federal grants are available for, *inter alia*, purposes of "developing or improving delivery of victim services to racial, cultural, ethnic, and language minorities"⁹⁶ Further, states must set forth in their grant applications the demographics of the service population, including information on "race, ethnicity and language background"⁹⁷

ethnic, racial, cultural, language diversity or geographic isolation").

⁹⁴ See, e.g., 42 U.S.C. § 10418(c) (requiring that any organization applying for a community initiative grant bring together "opinion leaders from each sector of the community").

⁹⁵ Soraya M. Coley & Joyce O. Beckett, *Black Battered Women: Practice Issues*, J. CONTEMP. SOC. WORK 483, 485-89 (1988) (noting the differences between Latinas, Black and White women and the need for appropriate service provision); Edward W. Gondolf et al., *Racial Differences Among Shelter Residents: A Comparison of Anglo, Black, and Hispanic Battered*, 3 J. FAM. VIOLENCE 39, 48-49 (1988) (discussing study that found Latina shelter residents differed in status from other residents because they were comparatively poorer, had fewer years of education and sustained more extensive periods of abuse, and recommending increased services for Latinas in response to this difference); *Domestic Violence Against Latinas*, *supra* note 6, at 244 (arguing for domestic violence enforcement and service strategies responsive to the different experiences of Latinas and other women of color survivors of domestic violence).

⁹⁶ 42 U.S.C. § 3796gg (1994).

⁹⁷ 42 U.S.C. § 3796gg-1.

in order to qualify for a grant. Applicants for the National Domestic Violence Hotline grant had to provide a plan for servicing "non-English speaking callers," such as by employing Spanish-speaking hotline personnel,⁹⁸ and had to demonstrate a commitment to "diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities"⁹⁹

Although the VAWA data collection provisions¹⁰⁰ are less specific, they do require, in the development of a research agenda, inclusion of experts on services to ethnic and language minority communities, and a focus on the needs of undeserved populations.¹⁰¹ Such data is critical because there is little information about domestic violence and its impact on women within communities of color. The collection of this data is an important step in designing appropriate preventive and protective anti-violence programs in ethnic communities.

Several sections of the VAWA are most likely to provide assistance to Latinas and other non-English speaking or immigrant groups of women in particular, despite the general lack of specific data on these domestic violence survivors. First, Subtitle G amends the Immigration and Nationality Act,¹⁰² and authorizes immigrant women and children who are survivors of domestic violence to petition for legal status on their own.¹⁰³ As a result, Latina immigrant survivors and other immigrant women survivors of domestic violence may apply for legal status without relying on an

⁹⁸ 42 U.S.C. § 10416(e)(2)(E).

⁹⁹ 42 U.S.C. § 10416(e)(4). The 24-hour national domestic violence hotline (1-800-799-SAFE) is currently run by the Texas Council on Family Violence and provides services in 139 languages. Genny Wilkinson, *State Gets Fed Hotline for Violence in the Home*, CAPITAL TIMES (Madison), Feb. 22, 1996, at 1A; Christy Hoppe & Kathy Lewis, *Anti-Abuse Hotline Gets Its 1st Call: Austin-based Service Unveiled by Clinton*, DALLAS MORNING NEWS, Feb. 22, 1996, at 21A.

¹⁰⁰ 42 U.S.C. § 13961.

¹⁰¹ 42 U.S.C. § 13961. Underserved populations are recognized in the VAWA as including racial, ethnic and language minority populations. 42 U.S.C. § 10402(a)(2)(C).

¹⁰² Law of June 27, 1952, ch. 477, 66 Stat. 163 (codified as amended in scattered sections of 8, 18 and 22 U.S.C. (1994)).

¹⁰³ 8 U.S.C. § 1154(a)(1)(A)(iii) (1994).

abusive spouse or parent.¹⁰⁴ In effect, Subtitle G removes leverage the abuser may have against a woman previously available to him because of the abuser's legal petitioning standing.

The self-petitioning section illustrates how the VAWA is grounded in feminist notions of autonomy and empowerment of women. Rather than perpetuate the dependent and legally uncertain status of undocumented immigrant women, by recognizing their ability to self-petition on their behalf, the VAWA recentralizes the immigrant woman's position of power vis-a-vis the abuser. Moreover, not only may she seek legal status without the tether of the abuser, but she may also legally and official break that tether by terminating the marriage, without fear of reprisal by the Immigration and Naturalization Service ("INS") or resultant detriment to her petition.¹⁰⁵

An additional section of the VAWA which is of particular use to Latinas and other non-English speaking or immigrant women is the provision which establishes the national domestic violence hotline, with its attendant bilingual services.¹⁰⁶ The hotline serves as a federal resource to women in a private anonymous setting.¹⁰⁷ The very existence of such a federally-funded service communicates an important message to society that the federal government is committed to efforts to end violence against women.¹⁰⁸ By recognizing the need for bilingual services, the government has also sent the message that culturally and linguistically sensitive legislation is efficacious and necessary.¹⁰⁹

¹⁰⁴ See Leslye E. Orloff et al., *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 324-29 (1995).

¹⁰⁵ Of course, the immigrant woman is still in danger of retaliation at the hands of the abuser. See *supra* note 89 and accompanying text.

¹⁰⁶ 42 U.S.C. § 10416(e)(2)(E).

¹⁰⁷ The hotline is accessed through a toll-free telephone number (1-800-799-SAFE). See *supra* notes 98-99 and accompanying text (discussing the hotline).

¹⁰⁸ *Puerto Rico's Domestic Violence Law*, *supra* note 6, at 107.

¹⁰⁹ See *Puerto Rico's Domestic Violence Law*, *supra* note 6, at 107 (discussing in detail the importance of the national hotline and its bilingual service provision). My prior discussions on the need for and the importance of the hotline were indeed justified, as illustrated by the influx of telephone calls within hours of the inception of the hotline. Over 60 calls were lodged by noon on the hotline's first day. See Wilkinson, *supra* note 99, at 1A.

The VAWA also establishes a fund for community projects on domestic violence.¹¹⁰ Under the “Demonstration Grants for Community Initiatives” section, the VAWA authorizes grants to nonprofit organizations to “establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence.”¹¹¹ Community leaders must be involved in the program planning and development process.¹¹²

These sections, as well as the compendium of provisions as considered in context, provide for the advancement of a focused civil rights and feminist agenda against gender-based violence.

C. The VAWA's Limitations: When Gender Collides with Anti-Discrimination Doctrine

As feminists celebrate the VAWA for its reference to feminist doctrine, women of color consider whether the VAWA's accommodation of civil rights and feminist doctrine has succeeded. The limitations of the VAWA appear both doctrinal and pragmatic. This section focuses on two specific VAWA provisions: the civil rights remedy¹¹³ and the immigrant self-petitioning provision.¹¹⁴ This section also discusses the troubling aspects of the VAWA's encouragement of state invasive procedures and the VAWA's shelter appropriations.¹¹⁵

1. Civil Rights Remedy—Subtitle C

Civil rights advocates and feminists generally recognize the historical benefits of civil litigation and the role civil rights and women's rights cases have played in improving the status of

¹¹⁰ 42 U.S.C. § 10418.

¹¹¹ 42 U.S.C. § 10418(a).

¹¹² 42 U.S.C. § 10418(b)(2).

¹¹³ 42 U.S.C. § 13981.

¹¹⁴ 8 U.S.C. § 1154(a)(1)(A)(iii).

¹¹⁵ 42 U.S.C. § 10402(a)(1).

women and people of color.¹¹⁶ The VAWA civil rights remedy, however, contains certain difficulties related to its usefulness.

First, access to the legal system, including the courts, continues to be a major obstacle for women of color. There are too few Latino, African American and Asian officials in the legal system, serving as judges, lawyers, clerks, court officers and other court personnel.¹¹⁷ People of color, and women of color in particular, are isolated and have little faith in our legal system. Latinas, for example, carry the disproportionate burden of the lack of bilingual-bicultural personnel. Without sufficient translators and appropriate bilingual-bicultural providers available to them, Latinas are often reluctant to seek legal assistance, or unable to secure a legal remedy, even when they do turn to the courts for help. This situation is unlikely to improve as federal and state legislators ignore or reject the need for affirmative hiring and training

¹¹⁶ See, e.g., *United States v. Hohri*, 482 U.S. 64 (1987) (upholding lower court's decision to hear case on restitution for Japanese internment); *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986) (finding that the existence of hostile work environment may constitute sexual harassment in violation of Title VII); *Plyler v. Doe*, 457 U.S. 202 (1982) (invalidating statute which denied public school enrollment to immigrant, undocumented children); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (allowing race to be considered in school admissions policy in certain circumstances); *Lau v. Nichols*, 414 U.S. 563 (1974) (finding provision of classes only in English to non-English speaking students violates the Civil Rights Act of 1964, and mandating that public schools provide appropriate mechanism for such students to enjoy learning opportunities); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (rejecting sex-based classification as justification for additional requirements imposed on women seeking to receive certain federal benefits); *Roe v. Wade*, 410 U.S. 113 (1973) (invalidating state criminal abortion laws as unconstitutional); *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (holding racial segregation in public schools as unconstitutional).

¹¹⁷ Hector W. Soto, *New York City Police Department*, in *TOWARDS A PUERTO RICAN-LATINO AGENDA FOR NEW YORK CITY*, *supra* note 33, at 182, 184 (reporting that Latino percentage of New York City's police force is not representative of percentage of Latino population in New York City); *Domestic Violence Against Latinas*, *supra* note 6, at 243 n.65 (citing CIVILIAN COMPLAINTS INVESTIGATIVE BUREAU ANNUAL REPORT tbls. 20, 22, figs. 6, 7 (1990)) (indicating that the New York City Police Department is 12.6% Latino and 13.4% female); Brian McGrory & Ann Scales, *Affirmative Action: An American Dilemma, Part 5*, *BOSTON GLOBE*, May 25, 1995, (National/Foreign), at 1 (indicating that 26.4% of the Boston police force is minority).

programs which would increase the presence and employment of people of color in the judicial system. The likelihood of more representation in the legal system of historically excluded populations is minimal.

Second, the legal system has not always served as a positive vehicle for reform with respect to the struggles of women of color. Often, cases have furthered oppression or justified acts of injustice. Women of color are treated differently than men and other women.¹¹⁸ They are subject to both the sexism which pervades the judicial system, as well as the discrimination based on race and national origin which characterizes too many "judicial proceedings" and is found too often in the "halls of justice."¹¹⁹ It is with diminished expectations that many women of color turn to the courts.

Third, and perhaps the determinative factor in the equation, is the likelihood of obtaining satisfactory relief through this civil process. Since the scope of the civil rights provision is as yet

¹¹⁸ See Crenshaw, *supra* note 11, 141-50 (discussing specific employment discrimination cases involving Black women); Judith A. Winston, *Mirror, Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990*, 79 CAL. L. REV. 775, 778-79 (1991) ("Historic and economic factors make working women of color more vulnerable to racist and sexist employment practices than either working [W]hite women or working men of color."); see generally *Domestic Violence Against Latinas*, *supra* note 6 (arguing that the experiences of violence and of the legal process of Latina survivors of domestic violence are different from those of other women).

¹¹⁹ See Marina Angel, *Sexual Harassment by Judges*, 42 U. MIAMI L. REV. 817, 818 n.6 (1991) (listing the several state initiated task forces to consider gender bias in the courts); Dwight L. Greene, *Justice Scalia and Tonto, Judicial Pluralistic Ignorance, and the Myth of Colorless Individualism in Bostick v. Florida*, 67 TUL. L. REV. 1979, 2054 (1993); *Report of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System*, 73 OR. L. REV. 823 (1994) (discussing racial and ethnic bias in the Oregon courts); see also Judith Resnik, *Ambivalence: The Resiliency of Legal Culture in the United States*, 45 STAN. L. REV. 1525, 1539-40 nn.65-69 (1993); Suellen Scarnecchia, *State Responses to Task Force Reports on Race and Ethnic Bias in the Courts*, 16 HAMLIN L. REV. 923 (1993); Stephen Thernstrom, *Critical Observations on the Draft Final Report of the Special Committee on Race and Ethnicity to the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias*, 1995 PUB. INTEREST L. REV. 119 (1995).

untested, the extent of the relief courts will grant is unknown, and the possibility of securing financial compensation from the litigation is uncertain. In addition, the necessary financial and emotional investment in such litigation can be prohibitive for Latinas and other women of color survivors of domestic violence. Many do not have even sufficient financial resources to provide for their basic needs.¹²⁰ Nor are the batterers who would be the subjects of these lawsuits, deep-pocket defendants.¹²¹ The incentive to sue an abuser is even lower when, as is true for many women, the abuser provides the only, or a necessary portion of, the family's income.

Undoubtedly there will be women who would nevertheless proceed with such litigation notwithstanding the lack of monetary compensation involved. However, it is unlikely that counsel could be secured in such cases. Although the VAWA civil rights remedy provides for attorneys' fees,¹²² the "judgment-proof" status of the defendant is a consideration for the private bar.¹²³

¹²⁰ See Gondolf, *supra* note 95, at 49 (describing the limited resources available to Latina domestic violence survivors); *Domestic Violence Against Latinas*, *supra* note 6, at 238-39 (presenting demographic data on Latinas' economic and political status); Sonia M. Pérez & Denise De La Rosa Salazar, *Economic, Labor Force, and Social Implications of Latino Educational and Population Trends*, 15 HISPANIC J. BEHAVIORAL SCI. 188, 212 (1993) (indicating that Latinas' median income in 1990 was only \$10,099.00, compared to \$12,436.00 for non-Latinas).

¹²¹ See Pérez & DeLa Rosa Salazar, *supra* note 120, at 212 (analyzing the demographic and economic data of Latinos and stating that, in 1991, Latino males' median income was only \$14,141.00, almost half the \$22,207.00 of non-Latino men); *Domestic Violence Against Latinas*, *supra* note 6, at 236-37 (economic status statistics and poverty rates of Latino community).

¹²² While the VAWA itself does not refer to attorney fees, because it creates a civil right, fees are recoverable under the Civil Rights Attorney's Fees/Awards Act of 1976, 42 U.S.C. § 1988(b) (1994).

¹²³ Of course the potential monetary compensation of a lawsuit is irrelevant to nonprofit civil rights organizations who bring test cases and class actions. It is questionable whether these organizations could handle the majority of these cases. In fact, the civil rights remedy and its attendant attorney's fees provision are an attempt to increase the interest of the private bar in such cases, on behalf of the woman survivor. Nevertheless, the private bar cannot be expected to provide sufficient pro bono services in this area for all of the women who would

Fourth, there are too few attorneys interested in these cases and competent to develop the litigation required to succeed. The theoretical framework for the civil rights cause of action will be tested in the courts, but it will take several decisions before there is some semblance of judicial interpretation of the contours of the remedy. This process, as is the case historically for new legislation, will take years to develop and the decisions will take additional time to assess. In the interim, however, it is unlikely that women of color will be part of these test cases, for the reasons set forth above. In essence, the fact is that the survivor of domestic violence must be aware of the possible legal remedies in order to engage the system, and the survivor must have counsel available and ready to develop litigation in untested waters. Currently, the likelihood that women of color can be full participants in this litigation process is minimal.

Lest this analysis of the VAWA civil rights cause of action appear too pessimistic, I believe that there is also potential for reform based on utilization of this remedy. The ability to proceed in federal court has historically been a positive element in civil rights legislation.¹²⁴ Perceptions of the likelihood of more just treatment in federal rather than state courts has been a factor in the decision of counsel and clients to proceed with federal litigation. The existence of a support network is also critical to the utilization of this remedy. As the first section of this article makes clear, such a support network already exists. The visibility of civil rights activists and feminists, including women of color from both movements, can greatly increase the likelihood of litigation against gender-based violence.

need legal counsel.

¹²⁴ The federal judicial appointments of the last decade and a half have impacted greatly on the character and judicial activism of the federal bench. Nevertheless, the perception of the federal court as a hospitable forum continues within the civil rights community and amongst women activists, as demonstrated by the efforts to pass the VAWA and the ongoing support for such federal remedial initiatives as affirmative action.

2. *Self-Petitioning Provision—Subtitle G*

While in theory the section of the VAWA authorizing immigrant women domestic violence survivors to self-petition¹²⁵ for legally recognized status has the potential to dramatically alter, for the better, the status of undocumented immigrant women who are survivors of domestic violence, in practice Subtitle G has its limits. There is the obvious problem of informing and educating immigrant women about their rights under the VAWA and the INA. This is no easy task considering the history of distrust of the INS, as well as the difficulty in reaching a population which survives, in part, as a result of its underground nature and anonymity.¹²⁶ The difficulty of reaching immigrant women survivors of domestic violence is compounded by the fact that many are often isolated and cut off from information venues by the abusers, or as a direct consequence of their limited English proficiency.¹²⁷ Immigrant women are thus even more isolated than other domestic violence survivors because they cannot, or perceive that they cannot, pursue the existing avenues for assistance without fear of deportation or removal from the United States.¹²⁸ Moreover, within their own immigrant communities, family and community members often

¹²⁵ 8 U.S.C. § 1154(a).

¹²⁶ Orloff et al., *supra* note 104, at 315-16, 329 (discussing immigrant women's distrust of the legal system generally, and of the INS specifically). At least one group of commentators has suggested that the self-petitioning provision of the VAWA may be an exercise in futility because of the risk associated with a petitioner exposing herself to the Immigration and Naturalization Service. These commentators suggest that all prospective applicants seek assistance from an immigration advocate or attorney. Orloff et al., *supra* note 104, at 329.

¹²⁷ Orloff et al., *supra* note 104, at 316-17 & n.18 (noting that immigrant women are often cut off from information about American culture by the batterer, and that they face language barriers in the courts, in their relationships with the police and within the social service systems available to women).

¹²⁸ Klein & Orloff, *supra* note 13, at 1022 ("[F]ear of deportation is the primary reason that few [battered immigrant women] seek any help unless the violence against them has reached crisis proportions."); Orloff et al., *supra* note 104, at 315-16, 329 (discussing immigrant women's fears of deportation and exposure to the INS).

cannot be relied on for assistance because of those members' resistance to recognizing domestic violence within their families' lives.

The other practical hurdle to the full utilization of Subtitle G is the lack of sufficient numbers of advocates and lawyers to assist immigrant women through the petition process. Not only do immigrant women survivors require assistance with the petition process, but like other survivors of domestic violence, they are generally in need of protection from the abuser. They are just as likely as other women survivors to need shelter, police protection, and, if available to them, orders of protection.

3. *State Intervention—Mandatory Arrest Provisions*

Although the VAWA authorizes federal jurisdiction and invokes federal authority over particular anti-violence initiatives and claims,¹²⁹ there are VAWA sections which seek to influence state-based initiatives by applying federal policies directly to the state VAWA appropriations grantees. The VAWA provision which requires the adoption and implementation of mandatory arrest procedures¹³⁰ reflects current feminist preference for and utilization of this strategy.¹³¹

In order for states and local governments to be eligible for VAWA grants under Subtitle B, Chapter 3, they must

- (1) certify that their laws or official policies—

¹²⁹ See, e.g., 18 U.S.C. §§ 2241, 2247, 2248 (1994) (enhanced sex crimes penalties); 18 U.S.C. §§ 2261, 2262 (1994) (interstate enforcement); 42 U.S.C. § 13981 (civil rights remedy); 42 U.S.C. § 10416 (national domestic violence hotline); 42 U.S.C. §§ 13961-13963 (data and research).

¹³⁰ Under mandatory arrest policies, police officers must arrest an abuser where there is probable cause, even if the woman objects to the arrest.

¹³¹ 42 U.S.C. §§ 3796hh-3796hh-4 (1994). This provision applies to tribal governments as well as to state and local governmental units. I limit my discussion in this Article to its application at the state and local levels, although my views regarding women of color may be applicable to Native American women's experiences on tribal lands, which are subject to tribal government jurisdiction.

- (A) encourage or mandate arrests of domestic violence offenders based on probable cause that an offense has been committed; and
- (B) encourage or mandate arrest of domestic violence offenders who violate the terms of a valid and outstanding protection order.¹³²

State and local governments must also certify that they prohibit dual arrest—the practice by police officers of arresting both the abuser and the woman—and mutual restraining orders—the practice of issuing orders of protection against both parties.¹³³

Support and opposition to mandatory arrest policies and laws is contentious and the issues surrounding the implementation of mandatory arrest policies remain unresolved.¹³⁴ Nevertheless, since the VAWA adopts the implementation of local mandatory arrest policies and laws as a federal goal,¹³⁵ the impact of such policies at the local level on women of color must be considered.

¹³² 42 U.S.C. § 3796hh(c)(1).

¹³³ 42 U.S.C. § 3796hh(c) states that the governmental entities must:

(2) demonstrate that their laws, policies, or practices and their training programs discourage dual arrests of offender and victim;

(3) certify that their laws, policies, or practices prohibit issuance of mutual restraining orders of protection except in cases where both spouses file a claim and the court makes detailed findings of fact indicating that both spouses acted primarily as aggressors and that neither spouse acted primarily in self-defense; . . .

¹³⁴ Frank J. Remington, *LaFave on Arrest and the Three Decades That Have Followed*, 1993 U. ILL. L. REV. 315, 319 (1993) (favoring greater police discretion rather than “mandatory uncritical use of arrest in every case of domestic violence”); *Domestic Violence Against Latinas*, *supra* note 6, at 243-49 & n.62 (discussing the impact of law enforcement policies on Latinas and women of color domestic violence survivors, including mandatory arrest and citing to various articles on mandatory arrests); *see generally* Klein & Orloff, *supra* note 13 (reviewing state statutes and cases on domestic violence); Donna M. Welch, *Mandatory Arrest of Domestic Abusers: Panacea or Perpetuation of the Problem of Abuse*, 43 DEPAUL L. REV. 1133 (1994) (concluding that mandatory arrest laws in Chicago are not desirable).

¹³⁵ “The purpose of this part is to encourage States, Indian tribal governments, and units of local government to treat domestic violence as a serious violation of criminal law.” 42 U.S.C. § 3796hh(a).

The task of analyzing and critiquing the utility and effect of mandatory arrest policies on women of color is difficult because of the lack of research and evaluation of the subject. However, I have previously articulated my deep concern with the utility and implementational effects of mandatory arrest as applied to Latinas.¹³⁶ These concerns are founded on two aspects of mandatory arrest.

First, because it is a law enforcement model which is only effective to the extent that the woman has no control over the actions taken by police officers, it is philosophically in opposition to feminist and civil rights doctrines which have been founded on notions of individual and community empowerment and community-based control. While some supporters have argued that mandatory arrest is itself an empowering mechanism,¹³⁷ the lack of information on the experiences of women of color with mandatory arrest policies, belies reliance on prior evaluations of mandatory arrest practices and procedures. Even without such information we can, nevertheless, consider theoretical and historical observations and arguments concerning communities of color and women within those communities.¹³⁸

¹³⁶ *Domestic Violence Against Latinas*, *supra* note 6, at 243-49 (discussing law enforcement strategies in domestic violence cases as applied to Latinas).

¹³⁷ *Domestic Violence Against Latinas*, *supra* note 6, at 248 & n.86 (quoting Sara Mausolff Buel, *Mandatory Arrest for Domestic Violence*, 11 HARV. WOMEN'S L.J. 213, 223-24 (1988)).

¹³⁸ I have summarized those positions previously:

Several aspects of the Latinas' status, however, diminish the possible empowering effects of a mandatory arrest policy. First, Latinas face the precarious, often untenable situation of the "double bind"—empowerment through the disempowerment of a male member of the community. The internal conflict and the external pressure to cast police officials as outsiders, hostile to the community, frustrates the development of the Latinas' empowerment. Second, when the officer does not speak Spanish and the woman speaks little or no English, the empowerment potential again is diminished. Third, evidence suggests that police officers react to such arrest policies by arresting both the man and the woman—so called "dual arrests." Empowerment is unlikely when women are treated as if they have acted illegally, are as culpable as their batterers, or cannot be believed. Finally, subsequent official responses, as well as resources available to

A second troubling aspect of mandatory arrest is that it adopts and furthers an invasive state law model. Dependence on initiatives which are strategies for authorizing state involvement in individual relationships have proved debilitating for communities of color and women.¹³⁹ To the extent that the VAWA's provision encourages the increasing utilization of mandatory arrest at the local level, these concerns take on even greater urgency. Uncertainty as to the application of mandatory arrest to communities of color, and the general failure to contextualize law enforcement strategies in such a way as to reflect the history of abuse by police and the state is a significant problem with the VAWA.

4. *The VAWA Appropriations—Funding for Battered Women's Shelters and Social Services*

The VAWA authorizes additional funding through fiscal year 2000 for the Family Violence Prevention and Services Act¹⁴⁰ grants to the states for shelter programs and social services to be provided to "victims of family violence and their dependents . . ." ¹⁴¹ These services are of critical importance to domestic violence survivors. First, they serve the immediate need of providing a safe environment for women and their children, albeit for a temporary period.¹⁴² Second, in addition to the residential services available at shelters and other providers, they also have

the woman, determine her ability to end the violence and take control of her situation. Latinas have neither access to, nor the benefit of, extensive resources to ensure their safety.

Domestic Violence Against Latinas, *supra* note 6, at 248 (citations omitted).

¹³⁹ The recent flood of discourse on the impact of welfare and other entitlement policies on women and communities of color have highlighted some genuine problems with welfare dependency models. *See, e.g.* David Whitman et al., *Welfare: The Myth of Reform*, U.S. NEWS & WORLD REP., Jan. 16, 1995, at 30. Similarly, state child protection and local child welfare laws and policies have too often resulted in adverse consequences for families and mothers within communities of color. Ashe & Cahn, *supra* note 19, at 97-100; Roberts, *supra* note 19, at 1432-36, 1140-42.

¹⁴⁰ 8 U.S.C. § 1154(a).

¹⁴¹ 42 U.S.C. § 10402(a)(1).

¹⁴² *Id.*

available related social services, which for many survivors of domestic violence may be their only resources.

While the shelter system has provided many services to women of color,¹⁴³ the future availability and adequacy of these services are uncertain, despite the additional VAWA appropriations, because the appropriations merely grant additional money for an existing system; a system with serious institutional problems. Those problems have resulted in the failure to provide sufficient, culturally appropriate services for women of color, especially women who do not speak English.¹⁴⁴

¹⁴³ Even though shelter services are in high demand, there is still insufficient funding of these services and the attendant social services that survivors need, as demonstrated by the large number of requests for assistance and the low vacancy rate for spaces in the shelter system. See *Domestic Violence Against Latinas*, *supra* note 6, at 252 (“For every woman who seeks shelter, five are turned away, and [95] percent of shelters do not accept women with children. . . .”); see also Hoppe & Lewis, *supra* note 99, at 21A; Wilkinson, *supra* note 99, at 1A.

¹⁴⁴ Coley & Beckett, *supra* note 95, at 484, 486-89 (noting that Black women may feel alienated and estranged from the battered women’s movement because “some [B]lack women may believe that shelters are established for [W]hite battered females,” and discussing ways in which the shelter environment and shelter policies may be modified to properly serve Black women); *Domestic Violence Against Latinas*, *supra* note 6, at 252-54 (explaining that shelters do not provide sufficient bilingual and bicultural services due to lack of skilled personnel; majority of shelters provide an isolating and unfamiliar environment for Latinas; and shelters have denied access to Latinas who do not speak English).

Some commentators note that:

Non-English speaking battered women have limited access to shelter. When non-English speaking women do seek shelter, shelter workers often deny their requests because of the shelter’s general preference to offer limited numbers of slots to women who can theoretically make better use of shelter services. Nationally, few shelter programs provide bilingual access.

Orloff et al., *supra* note 104, at 316 n.18 (citing Catherine E. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1021-22 (1993)).

Under the Violence Prevention and Services Act, state grantees must:

[G]ive special emphasis to the support of community-based projects of demonstrated effectiveness carried out by nonprofit organizations, the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children.¹⁴⁵

To the extent that funding of shelters and services is prioritized in such a way as to benefit organizations and entities with a history of this work, programs developed by women of color which are community-based may proceed in the funding process at a disadvantage because of their inexperience and insufficient history with the contract bidding process. There may be an adverse impact on Latino community-based programs which do not have a history of working on domestic violence issues.¹⁴⁶

A more comprehensive legislative scheme is necessary to address this potential inequality in appropriations distribution. The anti-violence legislation must be amended to incorporate a "fair-share" component in distribution requirements. Under a "fair-share" approach, service communities would receive a percentage of appropriations commensurate with their representation in the general or service population. Due to the lack of accurate data including race, ethnicity, language and immigrant status of survivors of intimate partner violence, the general population numbers may be the appropriate comparison pool at this time. A fair-share distribution would ensure that women of color receive representatively proportionate shares of these limited funds.

However, even if the VAWA and the Family Violence Prevention and Services Act are construed to provide for sufficient funding to communities of color for culturally and linguistically appropriate services by women of color, for women of color, the problem of insufficient adequate services would remain. The small

¹⁴⁵ 42 U.S.C. § 10402(a)(2)(B)(ii).

¹⁴⁶ *Domestic Violence Against Latinas*, *supra* note 6, at 254 (arguing that Latino community-based organizations and service providers are inexperienced and ill-prepared to compete for state and local government contracts to provide services to Latina survivors of domestic violence).

number of entities interested and prepared within communities of color to provide anti-violence services and programs, and the ongoing need for community education and advocacy about the urgent need to address violence against women, especially violence by intimate partners and spouses, are significant obstacles to women of color survivors.

5. *Equal Justice for Women in the Courts—Ending Essentialism is Essential*

The VAWA Subtitle D provides for education and training grants for judges and court personnel in state and federal court systems.¹⁴⁷ Subtitle D is comprehensive in its coverage of the various aspects of violence against women, and adopts a feminist approach to gender-motivated violence education strategies. Moreover, while it addresses feminist concerns about the institutionalized gendered notions of intimate partner violence which pervade the judicial system, it similarly attempts to bring within its coverage issues concerning race that are of particular interest to civil rights activists. Subtitle D authorizes training on the

(13) sex stereotyping of female and male victims of domestic violence, myths about presence or absence of domestic violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice; . . .¹⁴⁸

The VAWA recognition of stereotypes and bias based on race and their potential impact on the judicial system are an advance-

¹⁴⁷ 42 U.S.C. §§ 13991-13993 (1994) (state courts); 42 U.S.C. §§ 14001-14002 (1994) (federal courts); see *Puerto Rico's Domestic Violence Law*, *supra* note 6, at 115-17 (describing Subtitle D and criticizing the apparent weakness of the congressional commitment to education and training within the federal judicial system, reflected in the Chapter 2 provisions which merely "encourage" the circuit judicial councils to undertake studies of gender bias in the circuits and to implement reforms, as compared with the Chapter 1 language, which authorizes the "State Justice Institute to award grants for the purpose of developing, testing, presenting, and disseminating model programs to be used by [s]tates in training judges and court personnel" on gender-motivated violence).

¹⁴⁸ 42 U.S.C. § 13992(13).

ment in this country's recent history of legislative efforts.¹⁴⁹ Nevertheless, Subtitle D has not captured, and does not reflect, the multi-variant experiences of women of color survivors of intimate partner violence. Subtitle D addresses a rather limited aspect of institutional biases that pervade the judicial system. It focuses on perceptions of the scope of violence and, as such, focuses on perceptions about the actions and psychology of men of color.

Subtitle D, and the judicial system, would better serve women of color if it incorporated topics on the treatment of bias against perceptions about women of color, generally, and about women of color who are survivors of domestic violence, specifically. For example, Subtitle D could authorize training on

the biases and myths surrounding the lives and choices of Latinas, African American, Asian, and Native American women who are the survivors of intimate partner violence, and the impact of those biases and perceptions on the administration of justice;

the institutional and individual discrimination based on gender, race, national origin, ethnicity, culture and language which pervade the judicial system and law enforcement, and the affect of such discrimination on the status and options available to the survivors and perpetrators of intimate partner violence within communities of color.

CONCLUSION

Recommendations for the increased utilization of all sections of the VAWA by women of color must promote the integration of women of color into the political system and into civil rights and feminist movements. The collaborative agenda that can be developed together by participants in the civil rights movement and the feminist movement is possible so long as women of color have an equal voice in the political dialogue. Any and all programs

¹⁴⁹ Contrast the majority of legislation in the past several years which has sought to limit rather than expand the rights of people of color and women, and which reflect stereotypes based on gender, race, ethnicity and culture. *See supra* part II.B. (discussing the treatment of welfare rights and women of color).

financed and promoted under the auspices of the VAWA must be designed and implemented with the assistance and under the direction of women representing diverse communities. Representational programs have long been integrated into various federal initiatives. *A fortiori* women of color and programs run by women of color must receive their fair share of VAWA allocations and decision-making power. Legislation that purports to address gender-based violence must also address the concerns and issues of women of color specifically. This requires addressing discrimination based on race, national origin, culture and language. The passage of the VAWA brings us part of the way towards addressing these issues. Through the cooperative efforts of civil rights activists and feminists, the VAWA can fulfill its obligation to all women, and can become part of a more fully collaborative activism that is the culmination of the struggles of women and people of color against violence as systemic oppression.

