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# IN PURSUIT OF ECONOMIC JUSTICE: THE POLITICAL ECONOMY OF DOMESTIC VIOLENCE LAWS AND POLICIES

Deborah M. Weissman\*

## *Abstract*

*Intimate partner violence (“IPV”) is often exercised as an act of coercion by abusers who engage in strategies to interfere with their partners’ ability to engage productively in the workplace and deny them control over economic resources, that is, to deny them agency. Certainly, awareness of the insidious facets of economic coercion of IPV has expanded in recent years. However, attention to the efficacy of legal and policy responses to the economic consequences of such abuse has not received commensurate attention. Federal and state laws designed to address economic abuse are applied haphazardly if at all. The laws themselves, moreover, are ill-suited to address the structural issues that contribute to domestic violence in the first place. Similarly, “economic justice initiatives” promoted by anti-violence advocates to “respond to, address, and prevent financial abuse” related to domestic violence fall far short of their intended goals. These programs ignore the overarching neoliberal underpinnings of the political economy that burden victims with the costs of their own remediation through practices designed to benefit financial markets.*

*The recent attention to remediating domestic violence, including economic abuse, illustrates the need to introduce analyses of political economy into law practices and advocacy strategies. This Article provides such analysis and considers how market forces constrain and shape legal remedies and advocacy strategies that address economic abuse. It argues that, without an understanding of the political economy, programmatic “advances” may, in fact, exacerbate the economic circumstances of victims as well as abusers.*

## I. INTRODUCTION

Violence experienced within the family—perhaps the most intimate of all social arrangements—causes devastating consequences.<sup>1</sup> The pervasive and often

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<sup>1</sup> This Article uses the term “intimate partner violence (IPV)” interchangeably with

permanent impact on the physical and psychological well-being of its immediate victims<sup>2</sup> has been well-documented.<sup>3</sup> Recent phenomena, including the #MeToo movement<sup>4</sup> and accounts of perpetrators of mass shootings with a history of domestic violence, have called new attention to the costs and consequences of violence against women.<sup>5</sup> Intimate violence inflicts long-lasting trauma and wreaks

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“domestic violence,” “gender violence,” and “family violence.” Critiques abound about the appropriateness of any of these terms, particularly the need to avoid imposing a gendered frame on violence that occurs in intimate relationships. *See generally* Julie Goldscheid, *Gender Neutrality, the “Violence Against Women” Frame, and Transformative Reform*, 82 UMKC L. REV. 623 (2014) (addressing the way gender violence is framed in law, policy, and popular rhetoric).

<sup>2</sup> This Article tends to prefer the term “victim” instead of “survivor,” which is often and appropriately used to express the dignity and strength of those who have experienced gender violence. This author is drawn to the term victim, and refers to the explanation offered by Roxane Gay: “I don’t want to pretend I am on some triumphant, uplifting journey.” As Jacqueline Rose notes in reviewing Gay’s use of the term, “Far from rendering her passive or pathetic, naming herself in this way is a form of agency that makes it possible for her to live and to write.” Jacqueline Rose, *I Am a Knife*, 40 LONDON REV. OF BOOKS 3 (Feb. 22, 2018), <https://www.lrb.co.uk/v40/n04/jacqueline-rose/i-am-a-knife> [<https://perma.cc/LAU7-F2LN>].

<sup>3</sup> Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1024 (2014). While domestic abuse can be perpetrated by any gender and in both heterosexual and same-sex relationships, women, and especially women in relationships where economic strain permeates, are more likely to be victims of such violence. Thus, this Article generally focuses on violence perpetrated by men against women in households experiencing economic uncertainty.

<sup>4</sup> #MeToo refers to an “extraordinary cultural moment of resistance against sexual harassment.” Vicki Schultz, *Reconceptualizing Sexual Harassment, Again*, 128 YALE L.J. FORUM 22, 24 (2018). The movement gathered new momentum after the disclosure of sexual harassment and assault by Hollywood mogul Harvey Weinstein. *Id.* at 30. The actress Alyssa Milano sent out a message on Twitter, calling for victims to respond with “me too.” *Id.* Milano was not the first to call for a movement response; her work followed Tarana Burke, a black feminist activist who first initiated the movement in 2007. *Id.* at 30 n.22. Victims of domestic violence have also used the hashtag. *See, e.g.*, Rachel Leah, *Is #MeToo Moving into Domestic Violence?*, SALON (Dec. 8, 2017), <https://www.salon.com/2017/12/08/lucy-mcintosh-mark-houston-metoo-domestic-violence> [<https://perma.cc/ZML7-ETFF>].

<sup>5</sup> April Fulton, *In Texas and Beyond: Mass Shootings Have Roots in Domestic Violence*, NPR (Nov. 7, 2017), <https://www.npr.org/sections/health-shots/2017/11/07/562387350/in-texas-and-beyond-mass-shootings-have-roots-in-domestic-violence> [<https://perma.cc/9BUT-X8QU>]; Amanda Taub, *Control and Fear: What Mass Killings and Domestic Violence Have in Common*, N.Y. TIMES, June 15, 2016, at A1. Donald Trump’s “locker room banter” and his defense of his aide, Rob Porter, who was accused of domestic violence against two former wives, further illuminated the domains in which the abuse of male power is expressed. David A. Farenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, WASH. POST. (Oct. 8, 2015), [https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eed4\\_story.html?utm\\_term=.2c3e38b92bd2](https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eed4_story.html?utm_term=.2c3e38b92bd2) [<https://perma.cc/>

havoc extending beyond the private spaces of the household, thereupon to lay bare the structural shortcomings of public institutions: outcomes that contribute to the erosion of the norms upon which the normative framework of everyday life is based.<sup>6</sup>

IPV involves more than physical abuse. Abusers often enact it as part of “a deliberate pattern of control in which individuals interfere with their partner’s ability to acquire, use, and maintain economic resources.”<sup>7</sup> Efforts of abusive partners who seek to sabotage a victim’s efforts to engage productively in the workplace are well-documented.<sup>8</sup> Indeed in one study, sixty percent of victims reported loss of employment as a result of the violence they suffered, and ninety-eight percent reported some sort of economic abuse, particularly financial abuse.<sup>9</sup> Abusers often deploy a range of tactics and strategies, such as prohibiting a victim’s access to information about finances or engaging in identity theft.<sup>10</sup> The loss of livelihood, reduced earning capacity, and credit crises attending domestic violence often present insurmountable obstacles preventing victims from exiting an abusive relationship.<sup>11</sup>

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8THL-GZKT]; *see also* Maggie Haberman, *Trump Talks of Bringing Back Rob Porter, Aide Accused of Spousal Abuse*, N.Y. TIMES (Mar. 28, 2018), <https://www.nytimes.com/2018/03/26/us/politics/trump-rob-porter.html> [<https://perma.cc/28TJ-YFXJ>].

<sup>6</sup> *See* Amy Ellison, *The Impact of Domestic Violence on Our Communities*, TNP (Dec. 9, 2015), <https://tnpsocial.org/the-impact-of-domestic-violence-on-our-community/> [<https://perma.cc/W3YJ-QWCE>]. *See generally* Marcy L. Karin, *Changing Federal Statutory Proposals to Address Domestic Violence at Work*, 74 BROOK. L. REV. 377 (2009) (discussing how federal regulation can address the “private” problem of violence in the workplace). Research demonstrates the effects of domestic violence on communities due to over-policing and over-reliance on the carceral state. *See* MS. FOUNDATION FOR WOMEN, SAFETY AND JUSTICE FOR ALL: EXAMINING THE RELATIONSHIP BETWEEN THE WOMEN’S ANTI-VIOLENCE MOVEMENT AND THE CRIMINAL LEGAL SYSTEM 1–4 (2003), [http://www.ncdsv.org/images/Ms\\_SafetyJusticeForAll\\_2003.pdf](http://www.ncdsv.org/images/Ms_SafetyJusticeForAll_2003.pdf) [<https://perma.cc/397W-SSMQ>]; *see also* Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 852–54 (2001) (noting the impact of aggressive policing of domestic violence on poor communities and communities of color).

<sup>7</sup> Judy L. Postmus et al., *Economic Abuse as an Invisible Form of Domestic Violence: A Multicountry Review*, TRAUMA, VIOLENCE, AND ABUSE 1, 2 (2018).

<sup>8</sup> *See infra* Section I.A.

<sup>9</sup> Sady Doyle, *Why Domestic Violence Is an Economic Issue*, THE NATION (Sept. 20, 2016), <https://www.thenation.com/article/why-domestic-violence-is-an-economic-issue/> [<https://perma.cc/NFR4-XMZXX>].

<sup>10</sup> *See* LISA D. BRUSH, POVERTY, BATTERED WOMEN, AND WORK IN U.S. PUBLIC POLICY 14, 16 (2011) (articulating the ways that patterns and tactics domestic violence interfere with women’s economic agency); *see also* Margo Lindauer, “Please Stop Telling Her to Leave” *Where Is the Money: Reclaiming Economic Power to Address Domestic Violence*, 39 SEATTLE U. L. REV. 1263, 1277–78 (2016); Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CAL. L. REV. 951, 952–53 (2012).

<sup>11</sup> Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much Is Too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 4–5 (2007);

Economic abuse must be understood as a means of coercion by which an abuser seeks to achieve the subordination of the victim. Effective redress requires recognition of this type of abuse within the larger political-economic framework. Both victims and abusive partners often enact symbiotic behaviors within the political-economic realities of day-to-day life.<sup>12</sup> Greer Litton Fox and Michael Benson have studied the effects of neighborhood economic instability on domestic violence and suggest that “the private behaviors of couples in their homes cannot be separated either from their local neighborhood settings or from the larger political economy and that as economic despair begins to displace economic confidence, an increase in the prevalence of IPV will not lag far behind.”<sup>13</sup> Lisa Brush observes in the context of poverty and domestic violence, “as economists are the first to point out, violence affects income at least as much as income affects violence.”<sup>14</sup>

Domestic violence is most assuredly criminal behavior. Many scholars and activists, however, have argued that the problem cannot be resolved through criminal justice strategies alone—or even principally—due to the structural racism and intrinsic punitive purpose of the criminal justice system.<sup>15</sup> As Jacqueline Rose has suggested, “[i]t is scary, though common enough historically, to witness the speed with which a progressive cause can become complicit with, or be co-opted by, a nasty political agenda.”<sup>16</sup> Donna Coker and Ahjané Macquoid have observed that well-meaning efforts to transform an understanding of violence against women from

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Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 FLA. ST. U. L. REV. 669, 678 (2008).

<sup>12</sup> See Deborah M. Weissman, *The Personal Is Political-and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 428–30 (2007).

<sup>13</sup> Greer Litton Fox & Michael Benson, *Household and Neighborhood Contexts of Intimate Partner Violence*, 121 PUB. HEALTH REP. 419, 426 (2006).

<sup>14</sup> BRUSH, *supra* note 10, at 69.

<sup>15</sup> See, e.g., Donna Coker et al., *Introduction: CONVERGE! Reimagining the Movement to End Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 249 (2015).

<sup>16</sup> See Rose, *supra* note 2. For articles and books that discuss the harm occasioned by criminal justice system responses to gender violence, see MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 47 (rev'd ed. 2012); MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* 78 (2006); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1257 (1991); Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 N.Y.U. REV. L. & SOC. CHANGE 281, 287 (1997); Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J.L. & GENDER 53, 54–55 (2017); Alexandra Grant, *Intersectional Discrimination in U Visa Certification Denials: An Irremediable Violation of Equal Protection?* 3 COLUM. J. RACE & L. 253, 262 (2013); Radha Vishnuvajjala, *Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent*, 32 B.C. J.L. & SOC. JUST. 185, 208–09 (2012); Weissman, *supra* note 12, at 401; Coker, *supra* note 6, at 852–54.

a private matter to an issue of public concern requiring criminal responses evolved into a movement that served to drive hyper-incarceration and further expand the apparatus of the punitive state.<sup>17</sup> Thus, current scholarly and advocacy trends have, in varying degrees, called into question the resort to imprisonment as a means of relief and remediation. The turn away from criminal punishment has been accompanied by greater attention to the relevance of poverty and economic concerns to domestic violence which necessitates reconsideration of the sources of the problem and a recognition of the need to develop new remedies.<sup>18</sup>

Domestic violence has been addressed principally as a problem of physical violence.<sup>19</sup> Although more recently, the economic nature of IPV has received attention, little consideration has been given to the efficacy of the law as a means to ameliorate the economic consequences of such abuse.<sup>20</sup> Federal and state laws designed to address the economic consequences of domestic violence are often honored in the breach.<sup>21</sup> The laws themselves, moreover, are insufficiently targeted to address the structural issues that contribute to domestic violence in the first place.<sup>22</sup>

Recently, antiviolence advocates have begun to address economic abuse. National organizations, as well as state and local programs, have embraced economic justice initiatives that claim to “respond to, address, and prevent financial abuse” related to domestic violence.<sup>23</sup> These “new” economic justice advocacy

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<sup>17</sup> Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 585, 591–92 (2015).

<sup>18</sup> For scholarship examining this relationship, see LAURA BRIGGS, *HOW ALL POLITICS BECAME REPRODUCTIVE POLITICS* 64 (2017) (noting that domestic violence is the primary cause of women’s poverty); Laura T. Kessler, *PPI, Patriarchy, and the Schizophrenic View of Women: A Feminist Analysis of Welfare Reform in Maryland*, 6 MD. J. CONTEMP. LEGAL ISSUES 317, 375 n.12 (1995) (citing studies showing a direct correlation between domestic violence and poverty); JODY RAPHAEL & RICHARD TOLMAN, *TRAPPED BY POVERTY, TRAPPED BY ABUSE: NEW EVIDENCE DOCUMENTING THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND WELFARE* (1997) (path-breaking study showing that domestic violence prevents women from engaging in the workforce).

<sup>19</sup> See *Areas of Focus*, OFFICE OF VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUST., <https://www.justice.gov/ovw/areas-focus> [<https://perma.cc/J4JU-VD6C>] (last visited July 17, 2019) (defining domestic violence as crimes of violence); see also Kristy Candela, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 FAM. CT. REV. 112, 117 (2016) (“There is an obvious fixation on physical violence and criminal acts in domestic violence statutes.”).

<sup>20</sup> See *infra* Part I.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *Economic Justice*, NAT’L NETWORK TO END DOMESTIC VIOLENCE <https://nnedv.org/content/economic-justice/> [<https://perma.cc/7BEZ-2BRB>] (last visited July 17, 2019) [hereinafter NNEDV]. The NNEDV is a national network that provides technical assistance to the state and local domestic violence coalitions. *Id.* An internet search

strategies identify the need to adopt a range of workplace supports.<sup>24</sup> All to the good, of course. However, these initiatives, perhaps because they are relatively new, are imperfectly suited to accomplish their goals: to prevent domestic violence and enhance economic security for victims of domestic violence. The primary programmatic focus of these “economic justice initiatives” privileges personal financial literacy as a means to repair consumer credit and assist victims with banking and saving, presumptively to achieve economic independence.<sup>25</sup> These strategies are based on a flawed premise of victim empowerment folklore within the culture of self-help that disregards the structural dimensions of poverty and debt. They ignore the neoliberal structure of the political economy that burdens victims with the costs of their remediation through strategies that benefit financial markets.<sup>26</sup> Abuser treatment programs designed to hold abusers accountable and support victims, moreover, acknowledge that economic strain and unemployment are demographic risk factors in domestic violence, but fail to address joblessness as a means to mitigate the abuse.<sup>27</sup>

The failure to address the structural dimensions of economic abuse and related financial issues is not confined to the judicial system and advocates.<sup>28</sup> To be sure, economic analyses have deepened our understanding of both the ways that livelihood—or the lack of livelihood—contributes to impoverishment and

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of domestic violence programs that have recently adopted “economic justice initiatives” as a primary means of responding to domestic violence reveals too many entries to cite. Financial abuse is a subset of economic abuse with a focus on the abusive partner’s control of money and finances. *See* Postmus et al., *supra* note 7, at 7.

<sup>24</sup> *See Economic Justice Policy*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <https://nnedv.org/content/economic-justice-policy/> [<https://perma.cc/P2LE-R9KZ>] (last visited July 22, 2019).

<sup>25</sup> *See id.*; *see also Highlighting Financial Empowerment & the Allstate Foundation Annual Purple Purse Challenge*, NAT’L NETWORK TO END DOMESTIC VIOLENCE (July 19, 2017), [https://nnedv.org/latest\\_update/purple-purse-challenge/](https://nnedv.org/latest_update/purple-purse-challenge/) [<https://perma.cc/XV9Y-V9NH>]; *Program Profile Economic Justice Project*, DOMESTIC VIOLENCE EVIDENCE PROJECT, <https://www.dvevidenceproject.org/focus-areas/services-to-victims/program-and-practice-reviews/program-profile-economic-justice-project/> [<https://perma.cc/L633-4R5N>] (last visited Aug. 20, 2019); Sarah J. Shoener & Erika A. Sussman, *Economic Ripple Effect of IPV: Building Partnerships for Systemic Change*, 18 DOMESTIC VIOLENCE REP. 83, 84 (2013) (noting the emphasis on financial literacy training as the focus on the domestic violence movement’s work related to economic justice).

<sup>26</sup> This is generally true in the realm of gender and international analysis. *See HANDBOOK ON THE INTERNATIONAL POLITICAL ECONOMY OF GENDER 1* (Juanita Elias & Adrienne Roberts eds., 2018).

<sup>27</sup> *See infra* Part III.

<sup>28</sup> This is true generally across advocacy and research fields. *See Economic Empowerment Is a Social Justice Issue*, JANE DOE INC., [http://www.janedoe.org/what\\_we\\_do/economic\\_empowerment](http://www.janedoe.org/what_we_do/economic_empowerment) [<https://perma.cc/63D9-S3KW>] (last visited Jul. 22, 2019) (noting 74% of Americans personally know someone who suffered abuse, but 75% do not relate domestic violence with economic abuse).

entrapment for victims and the manner in which economic instability acts as a determinant in abusive behavior. But missing from academic narratives are political-economic analyses by which to examine the means of remediating domestic violence-related economic abuse.<sup>29</sup>

The recent attention to remediating economic abuse demonstrates the need to introduce matters of political economy into law and advocacy strategies. Such a framework provides a way to map how the state and the market respond to poverty and economic insecurity associated with domestic violence.<sup>30</sup> This Article provides such analysis and considers how market forces have shaped and constrained legal remedies and advocacy strategies that address economic abuse. It gives particular attention to the experience of poor and working-class women who are most likely to be victims of IPV and are also among the least likely to obtain meaningful relief within the dominant paradigm of domestic violence advocacy.<sup>31</sup> This Article critically examines whether existing legal remedies and advocacy strategies adequately engage an understanding of the political economy so that programmatic “advances” do not further exacerbate the economic circumstances of struggling survivors as well as abusive partners. Interventions designed to address the economic consequences of domestic violence are best analyzed within the real-life dynamics of families, households, and other economic relationships. That is, in function—or not—of the shattered remains of the social contract laid eviscerated by neoliberal austerities that “favor[] free-market solutions to economic problems.”<sup>32</sup>

Part I of this Article identifies the principal sources of law that acknowledge the relationship between economic abuse and domestic violence and then analyzes the efficacy of the legal response. It suggests that, notwithstanding the law’s apparent recognition of the economic abuse, most legal responses to domestic

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<sup>29</sup> *See id.*

<sup>30</sup> *See* Frank Pasquale, *Capital’s Offense: Law’s Entrenchment of Inequality* (On Piketty, “*Capital in the 21st Century*”), *BOUNDARY 2* (Oct. 1, 2014), [https://www.boundary2.org/2014/10/capitals-offense-laws-entrenchment-of-inequality/#\\_ftnref21](https://www.boundary2.org/2014/10/capitals-offense-laws-entrenchment-of-inequality/#_ftnref21) [<https://perma.cc/CBY2-DK3V>] (explaining the use of the term “political economy”); *see also* Anna Akbar, *Teaching Penal Abolition*, *LAW & POL. ECON.* (July 15, 2019), <https://lpeblog.org/> [<https://perma.cc/7FY9-5SDA>] (discussing a political economy framework has been used to examine a broad array of legal and social issues.).

<sup>31</sup> It is difficult to define the parameters of poor and working class and these definitions often turn on issues beyond income including education and cultural norms. However, it is reasonable to acknowledge economic inequality as differentiating between the rich and poor and that most working families fall on the side of the poor. *See* David Cole, *Taxing the Poor*, *N.Y. REV. OF BOOKS* 25, 26 (May 10, 2018); *see also* sources cited *supra* note 30.

<sup>32</sup> Stephanie Lee Mudge, *What Is Neoliberalism*, 6 *SOCIO-ECONOMIC REV.* 703, 706 (2008) (quoting *THE RISE OF NEOLIBERALISM AND INSTITUTIONAL ANALYSIS* (J. L. Campbell & O. K. Pedersen eds., 2001)). *see also* Kerry Rittich, *Black Sites: Locating the Family and Family Law in Development*, 58 *AMER. J. OF COMP. LAW* 1023, 1028 (2010) (arguing the need to link the family with the market as a way to reveal the interrelated pressures).



violence do not adequately address the problem: an instance in which the law fails both to apply available remedies and to address structural issues.

Part II explores current policy and program strategies as the domestic violence movement considers alternatives to criminal justice remedies. This part suggests that although there is variation in the field of domestic violence advocacy, most programs have embraced “a depoliticized view of economic issues” and have focused narrowly on technical issues related to personal money management as a means to address financial abuse.<sup>33</sup> This part examines the shortcomings of the financial literacy paradigm as a means to address economic abuse, arguing that such models are both fundamentally flawed and regressive.<sup>34</sup>

Part III addresses political-economic concerns related to the programs and interventions designed for abusive partners. It examines the ways in which the near-universal model of abuser treatment programs fails to engage the reality of abusers’ economic circumstances. It suggests that inadequate concern for the structural context of economic abuse is an egregious omission affecting the outcome of such programs.

Part IV provides an examination of emerging models that address economic abuse in the context of neoliberal policies and unfettered market ideology. It also reviews progressive initiatives that address the circumstances of perpetrators while holding them accountable for their abusive acts. These initiatives suggest that developing solutions within the interconnectedness of political economy and domestic violence is possible. Without such solutions, remedies will remain elusive. As Professors Rahman and Sitaraman have observed, “[a]s questions of economic inequality have taken center stage in American politics, there has been a growing interest among public law scholars in questions of power, institutional design, inequality, and political economy.”<sup>35</sup> These same interests should inform law and advocacy responses to domestic violence-related issues. A political-economic approach is required to understand the ways that current political and economic

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<sup>33</sup> See NICOLA SHARP-JEFFS, LONDON METRO. U., A REVIEW OF RESEARCH AND POLICY ON FINANCIAL ABUSE WITHIN INTIMATE PARTNER RELATIONSHIPS 7 (2015), <http://repository.londonmet.ac.uk/1482/1/Review-of-Research-and-Policy-on-Financial-Abuse.pdf> [<https://perma.cc/Q6YR-JLNK>] (explaining that financial abuse is a subset of economic abuse); Chris Arthur, *Consumers or Critical Citizens? Financial Literacy Education and Freedom*, 3 CRITICAL EDUC. 1, 3 (2012). See generally Cynthia K. Sanders et al., *Economic Education for Battered Women: An Evaluation of Outcomes*, 22 J. WOMEN & SOC. WORK 240 (2007) (examining recent economic education programs that are intended to improve financial literacy, financial choices, opportunities, and consequences for battered women); Shoener & Sussman, *supra* note 25 (exploring the reciprocal relationship between intimate partner violence which creates financial instability and the available economic legal remedies).

<sup>34</sup> See *infra* Part II.

<sup>35</sup> K. Sabeel Rahman & Ganesh Sitaraman, *The Second Republican Revival*, LAW & POL. ECON. (Apr. 30, 2018), <https://lpeblog.org/2018/04/30/the-second-republican-reviv/#more-665> [<https://perma.cc/B6LK-QCY2>].

arrangements affect victims, as well as abusive partners, to thereby assess economic justice strategies in relation to structural capitalist economic modalities.<sup>36</sup> Advocacy strategies must bridge the public and private dichotomy beyond what the anti-domestic violence movement has already accomplished and more: to examine the assumptions regarding market-driven strategies offered as remedies to repair the damage from economic abuse. To do otherwise would consign those whose lives are shattered by domestic violence to remedies more suited for those who possess political and financial power than those who do not.

## II. DOMESTIC VIOLENCE-RELATED ECONOMIC ABUSE AND THE LEGAL PROJECT

This Part examines the promises and the failures of the legal mechanisms deployed to address domestic violence-related economic abuse. Research on legal intervention has focused principally on the success—or lack thereof—of preventing future physical violence. This research has paid little attention to the efficacy of the law as a means to ameliorate the economic consequences of such abuse.<sup>37</sup> This Part does not address each means of legal intervention but rather seeks to identify the principal legal sites where the issue emerges and, further, to describe and critique how the law functions to address the problem. This Part examines the limitations of the instrumentalities of the law and calls attention to the ways the law avoids or complicates the problem within the context of a political-economic framework. That is, the way each of the varied legal tools contributes to a privatization of the consequences of domestic violence while concealing the contributing role of structural inequality.

A substantial body of research addresses the forms of domestic violence-related economic abuse.<sup>38</sup> The prevailing approach to domestic violence, however, presents principally as a “problem” of physical violence; and public attention focuses on this form of abuse.<sup>39</sup> Thus, this Part begins with a review of the research addressing the means and consequences of economic abuse as context for the discussion regarding federal and state legal remedies to follow thereafter.

### *A. The Economic Consequences of Domestic Violence & Economic Abuse*

The physical and psychological consequences of IPV reach deeply to shatter the sources of personal security, central to which is a woman’s ability to be fully

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<sup>36</sup> Amy Kapczynski, *Law and the Political Economy of Technology*, LAW & POL. ECON. (May 30, 2018), <https://lpeblog.org/2018/05/30/law-and-the-political-economy-of-technology/> [<https://perma.cc/H5UA-ENGJ>].

<sup>37</sup> See Melanie M. Hughes & Lisa D. Brush, *The Price of Protection: A Trajectory Analysis of Civil Remedies for Abuse and Women’s Earnings*, 80 AM. SOC. REV. 140, 143 (2015) (observing that the research on legal intervention has focused on abuse *per se* but not the effects of such intervention on economic outcomes).

<sup>38</sup> See *supra* notes 10–12, 18.

<sup>39</sup> Postmus et al., *supra* note 7, at 1.

engaged and productive in the workplace. Physical injuries sideline victims and compromise their mobility in all facets of their lives. Patterns are discernible and include repeated practices men use to prevent women from meaningful engagement in the workforce or to keep them from engaging in education or skills-gaining programs.<sup>40</sup> Jody Raphael's ground-breaking work on the relationship between domestic violence and poverty has described the harm inflicted by abusive partners seeking to deny their victims economic agency.<sup>41</sup> These tactics are well-documented and include the infliction of physical abuse in visible places to humiliate or otherwise impair a victim's ability to engage in the outside world, to interfere with transportation or childcare arrangements, and more.<sup>42</sup> Social scientists studying this phenomenon have defined economic abuse "as a deliberate pattern of control in which individuals interfere with their partner's ability to acquire, use, and maintain economic resources."<sup>43</sup> In fact, women are often exposed to a heightened risk of the most egregious forms of physical abuse precisely at the point at which they seek economic independence through employment, education, and training.<sup>44</sup>

The four-year Congressional inquiry examining the economic consequences of domestic violence, preliminary to the enactment of the 1994 Violence Against Women Act, provides ample evidence demonstrating how domestic violence contributes to the impoverishment of women.<sup>45</sup> Congressional hearings and reports substantiated domestic violence as a causal agent in reduced productivity in the workplace resulting in cycles of unemployment or under-employment.<sup>46</sup> Gender violence leads to increased health care expenditures, resulting in additional economic pressures.<sup>47</sup> And at least as important, the legislative evidence demonstrated that economic harm was an *intended consequence* resulting from calculated efforts to obstruct a woman's earning capacity, thereby denying her a means of independent livelihood—agency, in a word.<sup>48</sup>

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<sup>40</sup> Jody Raphael, *Welfare Reform: Prescription for Abuse? A Report on New Research Studies Documenting the Relationship of Domestic Violence and Welfare*, 19 LAW & POL'Y 123, 124 (1997); see also Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411, 412 (2012).

<sup>41</sup> Raphael, *supra* note 40, at 124.

<sup>42</sup> *Id.*

<sup>43</sup> Postmus et al., *supra* note 7, at 2.

<sup>44</sup> Richard M. Tolman & Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, 56 J. SOC. ISSUES 655, 667 (2000).

<sup>45</sup> Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (codified as amended in scattered sections of 8, 18, 22, 28, 34, and 42 U.S.C. (2012 & Supp. 2017)).

<sup>46</sup> See Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between "The Truly National and the Truly Local,"* 42 B.C. L. REV. 1081, 1091 (2000) [hereinafter Weissman, *Gender-Based Violence*] (citing Congressional hearings spanning a four-year period).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

Although the terms financial abuse and economic abuse are often used interchangeably, the former represents a particular subset of economic abuse. Researchers who study the issue observe that “financial abuse focuses specifically on individual money and finances.”<sup>49</sup> Abusive partners might seek to prohibit a victim’s access to information about finances, control all decisions with regard to household economics and spending, misuse property, engage in identity theft, steal property or money, incur debt through coercive or surreptitious means, or coerce a victim to file a fraudulent or inaccurate joint tax return.<sup>50</sup> Financial abuse may decimate a woman’s financial well-being and result in psychological and physical ailments as a result of ensuing stress and poverty.<sup>51</sup> Debts incurred as a result of all forms of economic abuse will affect a victim’s chances of purchasing or renting a home and obtaining utilities, car and home insurance rates, and employability.<sup>52</sup> These debts constitute one of the greatest obstacles to leaving an abusive relationship.<sup>53</sup> The inability to maintain an adequate economic standard of living persists years after the abuse has ended.<sup>54</sup> Indeed, for victims of domestic violence, economic life may come to a standstill.

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<sup>49</sup> SHARP-JEFFS, *supra* note 33, at 8 (distinguishing abuse related to money and finances and abuse related to economic resources include housing and transportation, employment and education).

<sup>50</sup> *Id.* at 8–13 (describing forms of financial abuse); Postmus et al., *supra* note 7, at 5; see also Jamie Haar, *Women’s Work: Economic Security in the Domestic Violence Context*, 31 HOFSTRA LAB. & EMP. L. J. 471, 488 (2014).

<sup>51</sup> SHARP-JEFFS, *supra* note 33, at 16.

<sup>52</sup> See Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 423 (2013) [hereinafter Littwin, *Escaping Battered Credit*]; CTR. FOR SURVIVOR AGENCY & JUSTICE, *GUIDEBOOK ON CONSUMER & ECONOMIC LEGAL ADVOCACY FOR SURVIVORS 21* (2017), [https://csaj.org/document-library/CSAJ\\_Guidebook\\_COMPLETE.pdf](https://csaj.org/document-library/CSAJ_Guidebook_COMPLETE.pdf) [<https://perma.cc/A2TQ-Y75U>].

<sup>53</sup> Economic abuse is found to be a key mechanism by which men maintain “coercive control” over the victim. See EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 276 (2007).

<sup>54</sup> Postmus et al., *supra* note 7, at 2.

*B. Legal Responses to Economic Abuse at the Federal Level*

*1. The Violence Against Women Act*

The passage of the 1994 Violence Against Women Act (VAWA)<sup>55</sup> ratified a federal recognition of the relationship between gender-based violence and women's equality and economy. Gender-based violence was acknowledged as a national problem with economic consequences and civil rights implications.<sup>56</sup> The statute authorized funds for a variety of services to assist victims, including shelters and hotlines, training for judges, and criminal justice remedies.<sup>57</sup> As stated above, Congress enacted the statute after four years of hearings to ascertain the impact of domestic violence on the national economy and victims' economic impairment.<sup>58</sup> Despite this focus, an analysis of the developments and consequences of VAWA demonstrate the law's deficiencies at addressing the economic consequences of domestic violence.

*(a) VAWA's Civil Rights Remedy: Economic Damages*

Congressional findings determined that the economic consequences of gender-based violence were pervasive and pernicious, deliberate and destructive, and demanded a federal remedy justified under the Commerce Clause of the U.S. Constitution.<sup>59</sup> Based on the compelling evidence of economic consequences of abuse, together with findings on the failure of state criminal justice systems to address gender violence, Congress passed a civil rights remedy as a centerpiece of VAWA.<sup>60</sup> The legislative history demonstrates that the impact of gender-based violence on interstate commerce and upon victims' economic circumstances motivated legislators to focus on a strategy to ground the need for an economical remedy and supplement state laws.<sup>61</sup> As one scholar, who assisted in the drafting

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<sup>55</sup> Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 8, 18, 22, 28, 34, and 42 U.S.C. (2012 & Supp. 2017)).

<sup>56</sup> See Weissman, *Gender-Based Violence*, *supra* note 46, at 1087–89.

<sup>57</sup> For a detailed overview of the provisions of VAWA, see Weissman, *Gender-Based Violence*, *supra* note 46, at 1088–99.

<sup>58</sup> See Julie Goldscheid, *United States v. Morrison and the Civil Rights Remedy of the Violence Against Women Act: A Civil Rights Law Struck Down in the Name of Federalism*, 86 CORNELL L. REV. 109, 112–13 (2000). See generally Victoria F. Nourse, *Where Violence, Relationship, and Equality Meet: The Violence Against Women Act's Civil Rights Remedy*, 11 WIS. WOMEN'S L.J. 1 (1996) (detailing the legislative history of the act).

<sup>59</sup> See H.R. REP. NO. 103-711, at 385 (1994) (Conf. Rep.), as reprinted in 1994 U.S.C.C.A.N. 1839, 1853; see also S. REP. NO. 103-138, at 29 (1993). The Commerce Clause is found in U.S. CONST. art. I, § 8, cl. 3.

<sup>60</sup> See Weissman, *Gender-Based Violence*, *supra* note 46, at 1081–83.

<sup>61</sup> Nourse, *supra* note 58, at 18–23.

and enactment of VAWA, explained, “the subject of VAWA’s civil rights remedy should properly be regarded as economic.”<sup>62</sup>

VAWA’s proposed statutory remedy, based on the economic consequences of IPV, served to raise the matter of gender violence to the level of national concern. And more, as a litigation tool, it created a cause of action with the potential to enable a successful plaintiff to obtain compensatory and punitive damages, injunctive and declaratory relief, and attorney fees—all remedies designed to restore economic wellbeing and recover the losses occasioned by the violations suffered.<sup>63</sup> The remedy, however, was short-lived. In *United States v. Morrison*,<sup>64</sup> by a five to four vote, the U.S. Supreme Court struck down the civil rights provision of VAWA, characterizing gender-based violence as a noneconomic and noncommercial activity to which the Commerce Clause could not apply.<sup>65</sup>

Much has been written about *United States v. Morrison* and the jurisprudential questions it raised concerning economic activity and the reach of the Commerce Clause.<sup>66</sup> For purposes of remedying domestic violence, perhaps of greatest concern was the Court’s unwillingness to consider domestic violence as a matter of economic gravity with rights-based consequences appropriate for adjudication by federal courts. The majority failed to consider the Congressional findings that gender-based violence did indeed impact the national economy and, moreover, that the violent acts were themselves often specifically economic and designed to prevent a woman’s financial independence.<sup>67</sup> The Court’s unwillingness to accord judicial deference to

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<sup>62</sup> Sally F. Goldfarb, *The Supreme Court, the Violence Against Women Act, and the Use and Abuse of Federalism*, 71 *FORDHAM L. REV.* 57, 147 n.515 (2002); see also Judith Resnik, *Categorical Federalism: Jurisdiction, Gender, and the Globe*, 111 *YALE L.J.* 619, 633–34 (2001).

<sup>63</sup> See Violence Against Women Act of 1994 §§ 40302–40303, Pub. L. No. 103-322, 108 Stat. 1902, 1941, 42 U.S.C. § 1988(b), 34 U.S.C. § 12361(c) (Supp. 2017) (original version at 42 U.S.C. § 1988(b), 13981(c) (1994)), *invalidated* by *United States v. Morrison*, 529 U.S. 598 (2000).

<sup>64</sup> 529 U.S. 598 (2000).

<sup>65</sup> *Id.* at 609–613, 627. The Court also rejected Section 5 of the Fourteenth Amendment as a basis of support for the Act aimed at remedying the failure of state criminal justice systems. *Id.* at 615.

<sup>66</sup> See, e.g., Weissman, *Gender-Based Violence*, *supra* note 46; Julie Goldscheid, *The Civil Rights Remedy of the 1994 Violence Against Women Act: Struck Down but Not Ruled Out*, 39 *FAM. L.Q.* 157 (2005); Sally F. Goldfarb, *Violence Against Women and the Persistence of Privacy*, 61 *OHIO ST. L.J.* 1 (2000); Goldfarb, *supra* note 62; Victoria Nourse, *Disputing Male Sovereignty: On United States v. Morrison*, 114 *HARV. L. REV.* 135 (2000); Lawrence G. Sager, *A Letter to the Supreme Court Regarding the Missing Argument in Brzonkala v. Morrison*, 75 *N.Y.U. L. REV.* 150 (2000); Robert C. Post & Reva B. Siegel, *Equal Protection by Law: Federal Antidiscrimination Legislation After Morrison and Kimel*, 110 *YALE L.J.* 441 (2000).

<sup>67</sup> See *Morrison*, 529 U.S. at 614–17; see also *Domestic Violence: Not Just a Family Matter: Hearing Before the Subcomm. on Crime and Criminal Justice of the H. Comm. on the Judiciary*, 103d Cong. 25 (1994); *Violence Against Women: Victims of the System:*

the legislative findings displayed its inhospitable attitude to remedying the economic consequences of gender violence.<sup>68</sup>

*(b) Beyond Morrison: VAWA's Civil Rights Remedy's Structural Deficiencies*

Scholars and activists alike critiqued the decision in *Morrison*, yet a closer look at the Act reveals that VAWA promised limited value as a civil rights remedy to domestic violence. The civil rights action authorized suits against individuals, not institutions.<sup>69</sup> Professor Julie Goldscheid has described the difficulties with these limitations: “civil rights claims against individuals may be less advantageous because individuals generally can support less generous financial awards than can institutions.”<sup>70</sup> Moreover, she observes that VAWA’s civil rights remedies “contain an inherent class bias.”<sup>71</sup> Specifically, VAWA privileged those whose abusers had sufficient wealth (from whom a recovery might have been possible), thus discouraging those victims whose abusers lacked income or assets.<sup>72</sup> Thus, under VAWA, attorneys were unlikely to accept a VAWA civil rights claim on a contingency fee basis where recovery was unlikely. Poor women, unable to obtain counsel from federally funded Legal Aid programs whose attorneys are prohibited from accepting fee-generating cases, were particularly encumbered by lack of resources and therefore unlikely to utilize VAWA’s remedy.<sup>73</sup>

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*Hearing Before the Senate. Comm. on the Judiciary*, 102d Cong. 241 (1991); *Hearing on Domestic Violence: Hearing Before the Senate Comm. on the Judiciary*, 103d Cong. 27. (1993); S. REP. NO. 101-545, at 37 (1990).

<sup>68</sup> *Compare Morrison*, 529 U.S. at 614 (“[T]he existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation.”), with *Walter v. Nat’l Ass’n of Radiation Survivors*, 473 U.S. 305, 330 n.12 (1985) (noting that “[w]hen Congress makes findings on essentially factual issues . . . those findings are of course entitled to a great deal of deference, inasmuch as Congress is an institution better equipped to amass and evaluate the vast amounts of data bearing on such an issue”).

<sup>69</sup> Violence Against Women Act of 1994 §§ 40302–40303, Pub. L. No. 103-322, 108 Stat. 1902, 1941, 34 U.S.C. § 12361(c) (Supp. 2017) (original version at 42 U.S.C. § 13981(c) (1994)), *invalidated by* *United States v. Morrison*, 529 U.S. 598 (2000).

<sup>70</sup> Julie Goldscheid, *Elusive Equality in Domestic and Sexual Violence Law Reform*, 34 FLA. ST. U. L. REV. 731, 768 (2007) [hereinafter Goldscheid, *Elusive Equality*]; see also Lisset M. Pino, *Wal-Mart v. Dukes: The Feminist Case Against Individual Adjudication*, 30 YALE J.L. & FEMINISM 401, 404 (2018) (arguing that individualized adjudication hinders the ability to identify and evaluate claims of widespread discrimination).

<sup>71</sup> Goldscheid, *Elusive Equality*, *supra* note 70, at 768–69.

<sup>72</sup> See *id.*

<sup>73</sup> See 45 C.F.R. § 1609.3 (2017); James P. George, *Access to Justice, Costs, and Legal Aid*, 54 AM. J. COMP. L. 293, 313 (2006).

Income inequality and racism often decisively determined the degree to which VAWA's civil rights remedy served to provide relief.<sup>74</sup> As a general matter, in addition to lacking resources to afford counsel, women who are not fully proficient in English and who have suffered discrimination within the legal system are often excluded from access to legal remedies.<sup>75</sup> With regard to VAWA, as Professor Sally Goldfarb has written:

questions remain about the usefulness of the civil rights provision to poor women and women of color, in light of underlying obstacles like racial and ethnic bias in the legal system, inadequate access to counsel, and the inability of some perpetrators to pay damages because of their lack of assets.<sup>76</sup>

Indeed, an economy that acts to privilege access to market-driven legal services cannot plausibly be a sufficient means to obtain relief from domestic violence.

*(c) VAWA as a Funding Statute: The Failure to Purchase Remedy*

It is true that the Violence Against Women Act of 1994 offered more than a failed civil rights remedy. In all other regards, VAWA, which has largely operated as a funding stream for programs and services, has been reauthorized by Congress in 2000, 2005, and 2013, and was again proposed for renewal in 2018.<sup>77</sup> But the legislation has failed to address adequately the economic consequences of domestic violence or offer a sufficient economic remedy to victims. VAWA was originally enacted as Title IV of the Violent Crime Control and Law Enforcement Act and part

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<sup>74</sup> See Sally F. Goldfarb, *Viewing the Violence Against Women Act Through the Lenses of Feminist Legal Theory*, 31 WOMEN'S RTS. L. REP. 198, 203 (2010) [hereinafter Goldfarb, *Viewing the Violence*]; Jenny Rivera, *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J.L. & POL'Y 463, 491 (1996) (noting 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").

<sup>75</sup> Rivera, *supra* note 74, at 498.

<sup>76</sup> See Goldfarb, *Viewing the Violence*, *supra* note 74, at 203.

<sup>77</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 1101–1513, 114 Stat. 1464, 1491–1537; Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960; Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (codified as amended in scattered sections of 8, 18, 22, 28, 34, and 42 U.S.C. (2012 & Supp. 2017)); Violence Against Women Reauthorization Act 2018, H.R. 6545, 115th Cong. 2d Sess. (2018). At the time of this writing, it is currently up for reauthorization. See Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Cong. (2019) (as placed on Senate calendar, Apr. 10, 2019).



of an Omnibus Crime bill (the most sweeping crime bill in U.S. history).<sup>78</sup> The Act focused principally on increasing and enhancing options for criminal prosecution.<sup>79</sup>

To be sure, VAWA enacted much needed legal changes. In the realm of funding, it has included provisions mandating services by VAWA-funded recipients in exchange for receipt of federal dollars, including some funding for emergency and transitional housing support for qualifying victims.<sup>80</sup> But the allocations are insufficient, and those most affected by Congressional inattention to the economic needs of victims tend to be poor women who are seeking transitional second stage housing omitted from VAWA's funding scheme.<sup>81</sup> Moreover, housing assistance and safeguards apply only to those who demonstrate that they meet VAWA's narrow crime-related definition and reside in certain federally-funded units; but VAWA does not apply such protections or safeguards to or otherwise encumber private housing markets.<sup>82</sup>

VAWA funds tended to award money to established domestic violence programs that historically failed to consider the needs of poor women, women of color, and immigrant women.<sup>83</sup> Through each successive reauthorization, Congressional funding has increased to police, prosecutors, and prisons at the expense of programs and services that otherwise might have assisted victims with

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<sup>78</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796 (codified in scattered sections of 2, 15, 18, 21, 22, 28, 31, 34, and 42 U.S.C. (2012 & Supp. 2017)).

<sup>79</sup> Subsequent reauthorizations expanded criminal justice tools that some described as “draconian.” Marie Gottschalk, *Dismantling the Carceral State: The Future of Penal Policy Reform*, 84 TEX. L. REV. 1693, 1721 (2006). Others have described it as a “stunning extension of state power.” Dorothy Roberts, *Collateral Consequences, Genetic Surveillance, and the New Biopolitics of Race*, 54 HOW. L.J. 567, 571–72 (2011).

<sup>80</sup> For a list of all grants administered by the Office of Violence Against Women pursuant to the Violence Against Women Act, see *OVW Grants and Programs*, U.S. DEP. OF JUST., <https://www.justice.gov/ovw/grant-programs> [<https://perma.cc/BCC9-NP86>] (last updated Feb. 5, 2019).

<sup>81</sup> Alyse Faye Haugen, *When It Rains, It Pours: The Violence Against Women Act's Failure to Provide Shelter from the Storm of Domestic Violence*, 14 SCHOLAR 1035, 1057–58 (2012).

<sup>82</sup> 34 U.S.C. § 12291 (2012); NAT'L HOUSING L. PROJECT, VAWA 2013 CONTINUES VITAL HOUSING PROTECTIONS FOR SURVIVORS AND PROVIDES NEW SAFEGUARDS (Jan. 2014), <http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated.pdf> [<https://perma.cc/RQ9Q-8BFG>]. The prototype crime-related definition controls, despite the research that finds that victims are more likely to suffer non-physical abuse, in the form of economic or social abuse, than physical abuse. See, e.g., Maureen Outlaw, *No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners*, 24 J. FAM. VIOLENCE 263, 266 (2009).

<sup>83</sup> See Rivera, *supra* note 74, at 507–09 (noting that VAWA's funding scheme resulted in few anti-violence programs that are interested and capable of working with communities of color).

transformative economic recovery.<sup>84</sup> The criminal justice system has benefitted from VAWA's funding stream more than any other type of domestic violence-related intervention.<sup>85</sup> Moreover, since its initial enactment, already limited Congressional allocations for economic assistance have been either reduced or appropriated at lesser amounts than budgeted.<sup>86</sup> Indeed, studies show that current federal appropriations to mitigate domestic violence have failed to adequately appropriate funds for services, resulting in the lack of victim access to childcare, legal services, and public transportation.<sup>87</sup> Lack of funding resulted in approximately 12,000 unmet requests from victims in one single day, the majority of whom were seeking assistance for safe housing.<sup>88</sup>

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<sup>84</sup> Donna Coker, *Addressing Domestic Violence Through a Strategy of Economic Rights*, 24 WOMEN'S RTS. L. REP. 187, 188 (2003) (noting that most domestic violence funding is allocated to criminal intervention); see also *The Continued Importance of the Violence Against Women Act: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 2 (2009) (opening statement of Sen. Patrick J. Leahy); Caroline Bettinger-Lopez et al., *VAWA Is Not Enough: Academics Speak Out About VAWA*, FEMINIST L. PROFESSORS (Feb. 27, 2012), <http://www.feministlawprofessors.com/2012/02/academics-speak-about-vawa-reauthorization/> [<https://perma.cc/9P8F-GC65>] (noting that VAWA's 2012 allocation supplied criminal justice strategies with more than double the funds than allocated to civil legal assistance, housing, and training for family court judges combined); Rickke Mananzala et al., *Law Reform and Transformative Change: A Panel at CUNY Law*, 14 CUNY L. REV. 21, 41 (2010) (critiquing the Act's funding formula as disproportionately allocated to criminal intervention).

<sup>85</sup> See Leigh Goodmark, *The Violence Against Women Act Is Unlikely to Deter Domestic Violence — Here's Why*, PUB. RADIO INT'L (Oct. 23, 2018 10:45 AM), <https://www.pri.org/stories/2018-10-23/violence-against-women-act-unlikely-deter-domestic-violence-heres-why> [<https://perma.cc/BAB4-JGUH>].

<sup>86</sup> See Charlene K. Baker et al., *A Descriptive Analysis of Transitional Housing Programs for Survivors of Intimate Partner Violence in the United States*, 15 VIOLENCE AGAINST WOMEN 460, 463 (2009) (noting lesser appropriations for housing than what had been authorized); Bettinger-Lopez et al., *supra* note 84 (noting the \$11 million reduction in housing aid in VAWA 2013, and no consideration of emergency financial assistance or meaningful job assistance).

<sup>87</sup> NAT'L NETWORK TO END DOMESTIC VIOLENCE, FUNDING TO END DOMESTIC VIOLENCE FY 19 FEDERAL APPROPRIATIONS REQUESTS (July 2019), [https://dev.nnedv.org/wp-content/uploads/2019/07/Library\\_Public\\_Policy\\_Appropriations\\_Requests.pdf](https://dev.nnedv.org/wp-content/uploads/2019/07/Library_Public_Policy_Appropriations_Requests.pdf) [<https://perma.cc/J2NL-2TAV>].

<sup>88</sup> *Id.* at 2.

## 2. *The Personal Responsibility and Work Opportunity and Reconciliation Act*

The enactment of the Personal Responsibility and Work Opportunity and Reconciliation Act (“PRWORA”)<sup>89</sup> in 1996 was designed to limit dependency on welfare and transform the way in which the federal government provided for poor families.<sup>90</sup> PRWORA ended the historic Aid to Families of Dependent Children (“AFDC”) entitlement program,<sup>91</sup> which had been in place since 1935, and replaced it with Temporary Assistance for Needy Families (“TANF”).<sup>92</sup> PRWORA set forth new, stringent qualifications to qualify for TANF benefits, which were henceforth limited to five years, and required recipients to engage in work activities to maintain benefits.<sup>93</sup> PRWORA failed to address the impact of the restrictions on women whose reliance on public benefits was a result of IPV.<sup>94</sup> Congress, however, created an opportunity for victims of domestic violence to opt out of certain statutory requirements created by PRWORA through an amendment, known as the Family Violence Option, which was designed to ease the economic circumstances of poor victims of domestic violence.<sup>95</sup>

### *(a) The Personal Responsibility and Work Opportunity and Reconciliation Act and the Family Violence Option*

Congressional findings during PRWORA’s legislative process acknowledged that the great majority of welfare recipients—as many as three quarters—were

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<sup>89</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended at 42 U.S.C. §§ 601–610, 612–13, 615–17 (2012)).

<sup>90</sup> *Id.*

<sup>91</sup> The Aid to Families with Dependent Children Program was originally entitled Aid to Dependent Children. See Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 104(a)(2), 76 Stat. 173, 185 (codified as amended at 42 U.S.C. § 602).

<sup>92</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103, 110 Stat. at 2112–2155; CTR. ON BUDGET & POL’Y PRIORITIES, POLICY BASICS: TEMPORARY ASSISTANCE FOR NEEDY FAMILIES 1 (Aug. 15, 2018), <https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf> [<https://perma.cc/EJT5-TJ28>].

<sup>93</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended at 42 U.S.C. §§ 601–610, 612–13, 615–17 (2012)); see also Amy E. Hirsch, *Welfare Reform and Women with Felony Drug Convictions: Research Results and Policy Recommendations*, 33 CLEARINGHOUSE REV. 587 (2000) (noting that the Act also imposed a lifetime ban on welfare for those convicted of drug felonies or who had violated probation or parole).

<sup>94</sup> See generally Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform for Victims of Domestic Violence*, 5 GEO. J. FIGHTING POVERTY 3 (1997) (reviewing how funding restrictions may prevent victims from accessing basic subsistence to allow them to leave abuse relationships).

<sup>95</sup> 42 U.S.C. § 602(a)(7) (2012); 45 C.F.R. § 260.50 *et seq.* (2018).

victims of domestic abuse that interfered with their ability to obtain or maintain employment.<sup>96</sup> Studies have documented the importance of welfare benefits for domestic violence victims, many of whom have relied on public support as a temporary safety net to secure at least a bare minimum level of economic autonomy to enable them to flee abusive relationships.<sup>97</sup> These studies justified an amendment to PRWORA to address the impact of new welfare regulations on victims of domestic violence.<sup>98</sup> Known as the Wellstone-Murray Family Violence Option (“FVO”), the amendment permits, but does not mandate, state-by-state exemptions for domestic violence victims to receive benefits notwithstanding TANF’s time limits and work requirements.<sup>99</sup>

(b) *Assessing the Family Violence Option*

The prevailing consensus of empirical studies is that the FVO, even where adopted by the states, has provided little economic relief to victims of domestic violence.<sup>100</sup> The amendment lacks requirements or standards with regard to its

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<sup>96</sup> See Pub. L. No. 104-193, § 101, 110 Stat. 2105, 2110–12; see also Brief for Sixty-Six Organizations Serving Domestic Violence Survivors as Amici Curiae in Support of Respondents, *Anderson v. Roe*, 524 U.S. 982 (1998) (No. 98-97), 1998 WL 847246, at 11–3.

<sup>97</sup> MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* 355 (1988); Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 *YALE L. & POL’Y REV.* 369, 388 (1998); Raphael, *supra* note 40, at 125; see also Jody Raphael, *Domestic Violence and Welfare Receipt: Toward a New Feminist Theory of Welfare Dependency*, 19 *HARV. WOMEN’S L.J.* 201 (1996); Symposium, *A Leadership Summit: The Link Between Violence and Poverty in the Lives of Women and Their Children*, 3 *GEO. J. FIGHTING POVERTY* 5, 8 (1995); Stacy Brustin & Lisa Vollendorf Martin, *Paved with Good Intentions: Unintended Consequences of Federal Proposals to Integrate Child Support and Parenting Time*, 48 *IND. L. REV.* 803, 837 (2015).

<sup>98</sup> 42 U.S.C. § 602 (2012); 42 U.S.C. § 608(a)(7)(C) (2012) (listing the situations that constitute when a person has been “battered or subjected to extreme cruelty,” including when a person has been subjected to acts of physical and sexual abuse, mental abuse, and denial of medical care).

<sup>99</sup> 42 U.S.C. § 602(a)(7)(A)(i)–(ii) (2012). States wishing to implement the FVO would be required to screen TANF applicants for domestic violence to determine eligibility for time limit and work requirement waivers, refer to counseling, and waive cooperation requirements that required welfare recipients to assist the state in locating the non-custodial parent in order to oblige him to reimburse the state for TANF payments. For a discussion of the challenges of these child support enforcement cooperation requirements, see Deborah M. Weissman, *Countering Neoliberalism and Aligning Solidarities: Rethinking Domestic Violence Advocacy*, 45 *SW. L. REV.* 915, 931–934 (2016).

<sup>100</sup> *E.g.*, TIMOTHY CASEY ET AL., *NOT ENOUGH: WHAT TANF OFFERS FAMILY VIOLENCE VICTIMS*, LEGAL MOMENTUM & NAT’L RESOURCE CTR. ON DOMESTIC VIOLENCE 17–18 (2010), <https://vawnet.org/sites/default/files/materials/files/2016-08/NotEnoughTANF-FVFULLReport.pdf> [<https://perma.cc/97NN-6LQQ>]; Rachel J. Gallagher, *Welfare*

implementation. Welfare program caseworkers, in most cases, fail to screen TANF applicants and often withhold information about applicants' right to seek waivers from TANF requirements or otherwise obtain domestic violence referrals and services.<sup>101</sup> Caseworkers are reluctant to grant FVO waivers of work and do not extend the time period within which victims are eligible to receive benefits.<sup>102</sup> In some localities, the data shows that caseworkers have granted an extremely low number of waivers.<sup>103</sup> Moreover, the FVO does not recognize economic abuse as a circumstance related to domestic violence, thus raising additional questions as to the usefulness of the amendment.<sup>104</sup>

As a result of the failures of the FVO, domestic violence victims are expelled from welfare rolls and forced to accept low-wage, dead-end jobs without state support.<sup>105</sup> Promised job placement and training programs, touted as benefits of the Act, often never materialize.<sup>106</sup> The jobs that are available to domestic violence victims who are no longer eligible for welfare are of limited value in these victims' efforts to achieve economic stability.<sup>107</sup> Victims cannot use TANF funds for postsecondary education; and TANF instead prescribes "immediate paid employment, rather than promoting higher post-welfare wages and the possibility of

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*Reform's Inadequate Implementation of the Family Violence Option: Exploring the Dual Oppression of Poor Domestic Violence Victims*, 19 AM. U. J. GENDER, SOC. POL'Y & L. 987, 1003–04 (2011).

<sup>101</sup> Gallagher, *supra* note 100, at 1007.

<sup>102</sup> See Laurie Pompa, *The Family Violence Option in Texas: Why Is It Failing to Aid Domestic Violence Victims on Welfare and What to Do About It*, 16 TEX. J. WOMEN & L. 241, 251 (2007).

<sup>103</sup> *Id.* at 250 (providing data that out of 175,126 TANF applicants, Texas only granted 190 domestic violence waivers).

<sup>104</sup> 42 U.S.C. § 608(a)(7)(C)(iii) (2012); see also Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Legal Movement: From Safety to Security*, 60 VILL. L. REV. 145, 193 (2015) (explaining that, notwithstanding TANF's broad definition of domestic violence to include battery and extreme cruelty, case workers have narrowly interpreted domestic violence, privileging acts of physical violence).

<sup>105</sup> See Kevin J. Miller, *Welfare and the Minimum Wage: Are Workfare Participants "Employees" Under the Fair Labor Standards Act?*, 66 U. CHI. L. REV. 183, 207 (1999) (noting that TANF workfare participants are not guaranteed minimum wage, as the program focuses on participation rates rather than successful job placements).

<sup>106</sup> *Why It's So Hard to Get Off Welfare* (PBS radio broadcast Apr. 15, 2015), <http://www.pbs.org/newshour/bb/hard-get-welfare> [<https://perma.cc/RPZ7-XML9>]; Joel Handler, *Reforming/Deforming Welfare*, 4 NEW LEFT REV. 114, 124 (2000).

<sup>107</sup> KATHRYN EDIN & H. LUKE SHAEFER, \$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA 61 (2015); Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 LAW & CONTEMP. PROBS. 25, 40 (2014).

long-term self-sufficiency.”<sup>108</sup> Michele Gilman has observed that former welfare recipients often find work in low-wage jobs with few benefits.<sup>109</sup>

In sum, the FVO, enacted to provide some measure of financial protection for victims of domestic violence, has had little or no mitigating effect on the economic impact of domestic abuse or the consequences of PRWORA. The timing of the PRWORA’s enactment—merely two years after VAWA—suggests a type of legislative amnesia. As stated above, four years of VAWA hearings disclosed an abundance of evidence about the economic consequences of domestic violence.<sup>110</sup> Yet, both TANF sanctions and the empty promises of the FVO have imperiled victims, exposing them to the risks of hunger, homelessness, and unmet medical needs, and increasing the likelihood that they will return to abusive relationships for lack of a safety net.<sup>111</sup>

*(c) The Political Economy of the Welfare State: Domestic Violence in Context*

The FVO must be assessed for more than its ability, or lack thereof, to alleviate the consequences of domestic violence. Specifically, it must also be evaluated within the political-economic framework of the United States, which has long been considered a “welfare laggard” for its comparatively weak support for and lack of universal social programs.<sup>112</sup> The U.S. welfare model relies primarily on market factors, prized as the optimal regulatory mechanism for the distribution of goods and services, and secondarily on kinship systems, community ties, and private charities.<sup>113</sup> Statutory requirements regarding welfare eligibility derive from and

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<sup>108</sup> Janice Y. Law, *Changing Welfare “As We Know It” One More Time: Assuring Basic Skills and Postsecondary Education Access for TANF Recipients*, 48 SANTA CLARA L. REV. 243, 253 (2008).

<sup>109</sup> Michele Estrin Gilman, *Poverty and Communitarianism: Toward A Community-Based Welfare System*, 66 U. PITT. L. REV. 721, 742 (2005).

<sup>110</sup> See *supra* notes 60–63 and accompanying text.

<sup>111</sup> Vicki Lens, *Work Sanctions Under Welfare Reform: Are They Helping Women Achieve Self-Sufficiency?*, 13 DUKE J. GENDER L. & POL’Y 255, 263–64 (2006).

<sup>112</sup> MARIE GOTTSCHALK, *THE SHADOW WELFARE STATE* 1 (2000).

<sup>113</sup> SUSAN MOLLER OKIN, *JUSTICE, GENDER AND THE FAMILY* 123 (1989) (arguing that system is premised upon kinship systems); see also Anthony Giddens & Will Hutton, *In Conversation*, in *GLOBAL CAPITALISM* 44 (Will Hutton & Anthony Giddens eds., 2000) (noting that markets are considered superior in all regards compared to government and that markets foreclose the need for social justice programs).

reinforce the dominant economic and political ideologies,<sup>114</sup> and thus produce minimalist benefits that are targeted to the fewest eligible recipients.<sup>115</sup>

PRWORA and the FVO reflect the current punitive political-economic view of personal responsibility—one that does not provide much by way of cushion for victims of gender violence who lack the means to resume their lives without assistance.<sup>116</sup> PRWORA and the failed FVO reflect the prevalent ideology that the state has little responsibility for the economic wellbeing of its citizens, even when an act so universally decried as domestic violence befalls them. For victims of domestic violence, whose participation in the labor force is often hindered by the experiences of abuse, dependency on the market for economic sustenance in the form of wages and healthcare cannot provide sufficient opportunities for “economic citizenship.”<sup>117</sup> These enactments ignore the economic lives of domestic violence victims. Additionally, the erosion of private-sector welfare provisions, including pensions and health insurance, have adversely affected individuals with steady employment histories who now seek government assistance to make ends meet.<sup>118</sup> It will take more than an effective FVO to provide economic assistance to domestic violence victims to bring these concerns within the law and legal policy. Rather, it will take a humanist vision that transforms the political climate and considers “the relationship between economic inequality and the lives people are actually able to lead.”<sup>119</sup>

### 3. *The Internal Revenue Code*

The Internal Revenue Code (“I.R.C.”) affects all aspects of the national economy, including the economy of households that often constitute the family unit

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<sup>114</sup> Martha T. McCluskey, *Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State*, 78 IND. L.J. 783, 807–08 (2003) (stating that neoliberalism has used the seemingly technical economic tool of “moral hazard” to reposition AFDC from social virtue to social vice).

<sup>115</sup> ROBERT E. GOODIN ET AL., *THE REAL WORLDS OF WELFARE CAPITALISM* 44–45, 240–41 (1999) (noting that transfer payments have been so low that the “undeserving” poor receive amounts considered punitive); see also David Singh Grewal & Jedediah Purdy, *Inequality Rediscovered*, 18 THEORETICAL INQUIRIES IN L. 61, 63 (2017) (noting that answers to questions about inequality “lie in the laws that constitute various economic orders”).

<sup>116</sup> JAMES A. TYNER, *VIOLENCE IN CAPITALISM: DEVALUING LIFE IN AN AGE OF RESPONSIBILITY* 122 (2016) (suggesting that the Act served to punish welfare recipients for their plight).

<sup>117</sup> ALICE KESSLER-HARRIS, *IN PURSUIT OF EQUITY: WOMEN, MEN, AND THE QUEST FOR ECONOMIC CITIZENSHIP IN 20TH CENTURY AMERICA* 12 (2001) (defining economic citizenship).

<sup>118</sup> TYNER, *supra* note 116, at 124 (noting that although the Act promised to move people from welfare to work, most recipients were already employed, sometimes at two jobs but needing additional support to make ends meet).

<sup>119</sup> Grewal & Purdy, *supra* note 115, at 63.

of tax policy.<sup>120</sup> Tax laws have particular consequences for spouses who file joint tax returns. Joint filing tends to be the most economically beneficial filing status, whereby each spouse will be jointly and severally liable for each other's income taxes.<sup>121</sup> However, a joint filing spouse who is a victim of domestic violence, and who is denied control of family finances, often faces potential liability for income tax payments and penalties due to the wrongdoing of the abusive spouse.<sup>122</sup> Similarly, both marital status and abuse complicate eligibility for tax benefits under the Affordable Care Act ("ACA") and the Earned Income Tax Credit ("EITC").<sup>123</sup> A variety of I.R.C. mechanisms address these issues.

(a) *Income Tax Liability and Relief for Victims of Domestic Violence*

Almost a half-century ago, Congress recognized the need to create an exception to the joint liability framework in the I.R.C., having determined that "[n]umerous cases have arisen in which the imposition of joint liability upon an innocent spouse has resulted . . . in grave injustice."<sup>124</sup> Over the years that Congress has reconsidered and revised the joint liability exception, it has identified domestic violence as an issue relevant to avoiding tax injustice.<sup>125</sup>

Coerced filings of joint tax returns serve as an effective means of economic abuse.<sup>126</sup> For a victim of domestic violence, potential tax liabilities arising from fraudulent or inaccurate income tax returns may result in long-lasting consequences that compromise her ability to gain control of her economic life, already made difficult by the abuse she has suffered. The Internal Revenue Service ("IRS") is authorized to assess liability for a tax debt and penalties for up to ten years after returns were filed and collect against either or both spouses for the years the couple was married.<sup>127</sup> A tax liability of this sort may be due to the abuser's financial

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<sup>120</sup> Tessa R. Davis, *Mapping the Families of the Internal Revenue Code*, 22 VA. J. SOC. POL'Y & L. 179, 182 (2014).

<sup>121</sup> See I.R.C. § 6013(d)(3) (2012); see also Richard C.E. Beck, *The Failure of Innocent Spouse Reform*, 51 N.Y.L. SCH. L. REV. 929, 930 (2007) (describing the history of the joint return liability requirement); Robert W. Wood, *IRS Tougher On "Innocent" Spouse Relief*, FORBES (Oct. 18, 2010, 9:01 AM), <https://www.forbes.com/sites/robertwood/2010/10/18/irs-tougher-on-innocent-spouse-relief/#36035017bc4d> [<https://perma.cc/6PHP-3B3B>] (noting that only 5% of spouses file separate tax returns).

<sup>122</sup> See I.R.C. § 6013(d)(3) (2012) (stating that "if a joint return is made, . . . the liability with respect to the tax shall be joint and several").

<sup>123</sup> See *infra* Section I.B.3.c.

<sup>124</sup> S. Rep. No. 91-1537, at 2 (1970), as reprinted in 1970 U.S.C.C.A.N. 6089, 6090.

<sup>125</sup> See I.R.C. § 6015(c)(3)(C) (2012) (enumerating ways to obtain relief from joint and several liability on a joint tax return including relief for individuals who made an election with "actual knowledge" if the "individual with actual knowledge establishes that such individual signed the return under duress.").

<sup>126</sup> See Haar, *supra* note 50, at 491.

<sup>127</sup> See I.R.C. § 6013(d)(3) (2012) (stating that "if a joint return is made, . . . the liability with respect to the tax shall be joint and several"); I.R.C. § 6502(a) (2012).



dealings for which she lacked knowledge, consent, or control.<sup>128</sup> Moreover, it is unlikely that a victim of financial abuse would receive or benefit from any refund that might be due. In sum, tax filing is an issue that falls squarely within the parameters of domestic violence-related economic abuse.<sup>129</sup>

In addition to the claim that an abused tax filer signed a return under duress,<sup>130</sup> which would obviate the “joint” nature of such return, the I.R.C. sets out three types of relief from joint and several liability that bear on the circumstances of domestic violence victims. The first is “innocent spouse relief” that provides relief from any additional tax owed based on a spouse or former spouse’s failure to report income, report income improperly, or claim proper deductions or credits.<sup>131</sup> The second category, known as “separation of liability relief,” allows the IRS to allocate separately any additional tax owed between former spouses or current spouses when the parties are legally separated or not living together when a taxable item was not reported properly on a joint return.<sup>132</sup> Finally, the IRS may allow “equitable relief” when no other relief is available, and the income tax liability from which a spouse seeks relief is attributable to the other spouse.<sup>133</sup> As Professor Jamie Haar has explained, given the dynamics of domestic violence, and in particular economic abuse, a victim may not learn of a problem with a joint tax filing in a timely manner,

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<sup>128</sup> See Jennifer Sarkees, *Phase Three of New York State Domestic Violence Law: The Financial Aftermath*, 14 BUFF. WOMEN’S L.J. 95, 114–15 (2005) (explaining that “if the abusive spouse merely files a joint tax return where a tax liability exists, he may have, deliberately or inadvertently, made the victim liable for the debt”); see also Jacqueline Clarke, *(In)equitable Relief: How Judicial Misconceptions About Domestic Violence Prevent Victims from Attaining Innocent Spouse Relief Under I.R.C. Sec. S 6015(F)*, 22 AM. U. J. GENDER SOC. POL’Y & L. 825, 827 (2014) (“[A]n ‘innocent spouse’ will be liable for tax deficiencies belonging to her spouse, even if she had no knowledge of the liabilities or knew of the liabilities but feared to confront her spouse with them, as is quite common within the domestic violence context.”).

<sup>129</sup> See *Jones v. City of Opelika*, 319 U.S. 105, 137 (1943) (“The power to tax is the power to destroy only in the sense that those who have power can misuse it.”) (Frankfurter, J., dissenting).

<sup>130</sup> Duress is not defined in the I.R.C. In the context of tax relief, it is a lesser standard than abuse relating to factors at the time of signing the return that demonstrate that claimant involuntarily executed the return and thus, the return is not considered a joint return. Treas. Reg. § 1.6013–4 (2002); see also *Nihiser v. Comm’r*, 95 T.C.M. (CCH) 1531 (2008), 2008 WL 2120983 at \*8. This relief is not as comprehensive as equitable relief provided for an abused spouse, as the return will be treated as a single filing. For an overview of tax cases dealing with this concept, see Melvyn B. Frumkes, *Duress Diverts Dual Tax Liability for Joint Returns*, 19 J. AM. ACAD. MATRIMONIAL L. 1, 16 (2004).

<sup>131</sup> *Topic No. 205 Innocent Spouse Relief (Including Separation of Liability and Equitable Relief)*, INTERNAL REVENUE SERV., <https://www.irs.gov/taxtopics/tc205> [<https://perma.cc/9445-G4KA>] (last visited July 21, 2019).

<sup>132</sup> *Id.* The spouse seeking relief is still responsible for the remaining tax otherwise allocated to her. *Id.*

<sup>133</sup> *Id.*

and thus may be precluded from seeking “innocent spouse” or “separation of liability relief,” both of which the victim must seek within two years of the tax filing.<sup>134</sup> Thus, a request for equitable relief with more lenient standards is most likely to have the greatest relevance to victims of domestic violence.<sup>135</sup>

(b) *Assessing the Usefulness of I.R.S. Income Tax Relief*

Victims of domestic violence must follow IRS procedures to obtain relief and prove a number of factors related to marital status, lack of knowledge or control related to the underpayment or understated income, their own tax compliance histories, economic hardship, and proof of abuse.<sup>136</sup> The required IRS form used to seek tax relief is confusing and complicated, particularly for those without tax and other legal guidance. It sets out an initial advisory on the first page, informing the victim that her abusive spouse will be notified of her claim, which if successful, may cause him to bear additional tax burdens.<sup>137</sup> This advisory is repeated and emphasized (“there are no exceptions to this rule”) in the section related to domestic violence claims, amid ambiguous references to certain information that might be considered confidential.<sup>138</sup> Tax experts advise that if a tax claimant does proceed to timely file a properly completed, lengthy, and detailed form, her chances of obtaining relief from the IRS are underwhelming.<sup>139</sup>

The tax code provisions that might assist victims of domestic violence have not been easily deciphered by the courts. As one U.S. Tax Court stated, “[t]his is not a terribly well-developed corner of tax law, and it is not one in which we can really get much help by looking at detailed regulations or the ordinary canons of

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<sup>134</sup> Haar, *supra* note 50, at 492.

<sup>135</sup> *Id.*

<sup>136</sup> Rev. Proc. 2013-34, 2013-43 I.R.B. 397 (2013). For a useful overview of the revenue procedure guidelines based on an empirical study, see Clarke, *supra* note 128, at 825, 829–31.

<sup>137</sup> IRS, FORM 8857 REQUEST FOR INNOCENT SPOUSE REQUEST (Jan. 2014) <https://www.irs.gov/pub/irs-pdf/f8857.pdf> [<https://perma.cc/LTM6-KNZR>] (“Important things you should know” . . . “The IRS is required by law to notify the person on line 5 that you requested this relief.”).

<sup>138</sup> *Id.* at 6–7; see also Frances D. Sheehy & Anthony J. Scaletta, *The Continuing Evolution of the “New” Innocent Spouse Rules as Implemented and Interpreted by the Internal Revenue Service and the Courts Part II*, 76 FLA. B.J. 53, 56 (2002) (noting that the right to notice and intervention “allow[s] abusive spouses one more chance to intimidate the truly innocent spouse”). This does not suggest that an abusive spouse is not entitled to notice given the possibility of additional tax liability, but the request may create additional danger for an abused person.

<sup>139</sup> See Wood, *supra* note 121 (observing “the innocence label is not easy to get”); David Klasing, *When Can a Taxpayer Qualify for Innocent Tax Relief?*, KLASING ASSOCIATES (June 27, 2017), <https://klasing-associates.com/question/innocent-spouse-relief-qualified/> [<https://perma.cc/6WZZ-J2W8>].

construction.”<sup>140</sup> Although this type of relief is one of the most frequently litigated issues in the realm of the tax code, the IRS has provided little guidance to the courts.<sup>141</sup> Although tax courts may have improved from a time when a tax judge referred to domestic violence as “distasteful[] acts”,<sup>142</sup> a review of tax court decisions reveals that these courts fail to contextualize the history of domestic violence, and thus misapply standards relating to abuse and duress that bear on a victim’s request for relief.<sup>143</sup> Tax courts adjudicating claims for equitable relief provisions rarely have sufficient experience with the dynamics of domestic violence.<sup>144</sup> The analyses of tax court cases where claimants alleged domestic violence as the basis for tax relief reveal that outcomes are often confusing and demonstrate that tax courts are more likely to deny relief than grant it.<sup>145</sup>

Statutory factors favor a claimant who is separated or divorced when seeking relief, thus disadvantaging victims who remain married to their abusers because of physical threats as well as economic barriers to separation.<sup>146</sup> On the other hand, where victims are separated at the time of filing, judges fail to recognize that separation does not always end abuse and, in fact, attempts to exit an abusive relationship may exacerbate the danger of violence.<sup>147</sup> Thus, tax courts often deny relief on the basis that a victim “could not be abused at the time of signing.”<sup>148</sup> Some courts assign little or no weight to police records documenting domestic violence where the victim does not proceed with criminal charges and otherwise exact an

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<sup>140</sup> See *Nihiser v. Comm’r*, 95 T.C.M. (CCH) 1531 (2008), 2008 WL 2120983 at \*10.

<sup>141</sup> See Wei-Chih Chiang et al., *New Rules for Innocent Spouse Equitable Relief*, J. ACCOUNTANCY (Apr. 30, 2014), <https://www.journalofaccountancy.com/issues/2014/may/innocent-spouse-relief-20139090.html> [<https://perma.cc/92XK-52WP>]. Clarke, *supra* note 128, at 846.

<sup>142</sup> *Estate of Merlin H. Ayesworth v. Comm’r*, 24 T.C. 134, 145–46 (1955).

<sup>143</sup> Clarke, *supra* note 128, at 844–45, 853, 856 (examining tax court cases that reveal judge’s use of stereotypes and reliance on misconceptions about domestic violence); see, e.g., *Sotuyo v. Comm’r*, T.C. Summ. Op. 2012-27, at 5 (2012); *Ladehoff v. Comm’r*, T.C. Summ. Op. 2012-15, at 3 (2012).

<sup>144</sup> Clarke, *supra* note 128, at 856.

<sup>145</sup> *Id.* at 845–47 (noting a decline in the number of cases where relief for abused victims was granted).

<sup>146</sup> See *id.* at 838, 840–41 (reviewing cases where cultural reasons that prevented a divorce, as well as lack of financial means due to economic abuse, were not considered by the tax courts). Tax courts may be unfamiliar with the dynamic of “separation assault,” where victims are often at greatest danger when terminating the relationship. *Id.*; see also Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5–6 (1991).

<sup>147</sup> See Mahoney, *supra* note 145, at 65 (explaining separation violence “as a specific type of attack that occurs at or after the moment she decides on a separation or begins to prepare for one”).

<sup>148</sup> Clarke, *supra* note 128, at 847.

unreasonable evidentiary standard for proving abuse.<sup>149</sup> Other tax courts discount protection orders issued in family law matters as sufficient evidence of abuse.<sup>150</sup> Even in instances where the requesting spouse demonstrates that she suffered physical violence, there is no guarantee that a court will recognize her claim.<sup>151</sup>

Of particular concern is the tax courts' lack of understanding of economic abuse as a form of domestic violence. Courts are suspicious of financial abuse claims and demand a high level of substantiation often impossible to obtain.<sup>152</sup> An absence of regulatory guidance further complicates efforts to achieve tax relief. Jacqueline Clarke's empirical study of claims for equitable relief reveals the challenges victims have when facing "judicial reluctance" to find financial abuse as sufficient to meet the tax code requirements.<sup>153</sup>

(c) *Tax Benefits: The Affordable Care Act and Earned Income Tax Credit*

Income taxes are not the only realm of tax law of concern to abuse victims. The ACA provides tax benefits crucial for low-income persons unable to afford health insurance on their own.<sup>154</sup> Under the ACA, married taxpayers seeking the tax credit must file joint returns.<sup>155</sup> Although some exceptions to the joint filing requirement

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<sup>149</sup> See, e.g., *Sotuyo v. Comm'r*, No. 25692-10S, 2012 WL 1021306, at \*5 (T.C. Mar. 27, 2012); see also Clarke, *supra* note 128, at 847-848 (citing *Collier v. Comm'r*, 83 T.C.M. (CCH) 1799 (T.C. June 10, 2002), wherein the tax court refused to credit evidence from witnesses to emotional abuse and testimony from a psychologist who treated her for depression).

<sup>150</sup> Clarke, *supra* note 128, at 850.

<sup>151</sup> See, e.g., *Ladehoff v. Comm'r*, No. 16814-10S, 2012 WL 612501, at \*3 (T.C. Feb. 27, 2012) (denying a claim for equitable relief for a victim with two police reports documenting domestic battery).

<sup>152</sup> *Nihiser v. Comm'r*, 95 T.C.M. (CCH) 1531 (2008), 2008 WL 2120983 at \*9 (quoting a judge who stated, "spouses, in trying to escape financial liability, may easily exaggerate the level of nonphysical abuse. Innocent-spouse cases often spring from the dissolution of troubled marriages, and there is an obvious incentive to vilify the nonrequesting spouse.").

<sup>153</sup> Clarke, *supra* note 128, at 853; see also requirements under 26 U.S.C. § 6015(b)(1) (2012); Haar, *supra* note 50, at 492 (noting the "stringent" provisions of aspects of innocent spouse relief).

<sup>154</sup> Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 1401, 124 Stat. 119 (2010), amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (codified as amended in scattered sections of 42 U.S.C.). The tax credit, known as the Premium Tax Credit, is explained by the I.R.S. as "provid[ing] financial assistance to pay the premiums for the qualified health plan offered through a Marketplace by reducing the amount of tax you owe, giving you a refund, or increasing your refund amount." See IRS, INSTRUCTIONS FOR FORM 8962 (PREMIUM TAX CREDIT) (2018), <https://www.irs.gov/pub/irs-pdf/i8962.pdf> [<https://perma.cc/8NSR-A2MX>].

<sup>155</sup> 26 U.S.C. § 36B(c)(1)(C) (2012).

were enacted as part of the ACA, twenty-eight U.S. Senators urged the IRS to issue additional guidance in an attempt to further ameliorate the consequences of the requirement of marriage on victims of abuse.<sup>156</sup> The subsequent regulations promulgated by the IRS allow victims of domestic violence to file as if they were not married.<sup>157</sup> The regulations enacted to implement the ACA's domestic violence exception was written broadly to include abuse beyond the prototypical physical abuse, although economic or financial abuse is not specifically referenced.<sup>158</sup>

Similarly, individuals who are not divorced and wish to file as a single taxpayer are prohibited by tax regulations from claiming Earned Income Tax Credit ("EITC"), one of the most important tax benefits to low-income working families.<sup>159</sup> Domestic violence victims who face particular obstacles, if not danger, when seeking a divorce are especially burdened by these regulations.<sup>160</sup> Their options include filing a joint return, demonstrating eligibility to file as a single taxpayer, or qualifying to file as the head of household.<sup>161</sup>

(d) *Assessing the Usefulness of the ACA and EITC Exceptions*

Notwithstanding the developing regulatory interface between tax credits and the issue of domestic violence, the law leaves many issues unresolved. As with the IRS form governing relief from joint liability, the form for seeking the ACA's tax

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<sup>156</sup> Among the concerns identified were the dangers to a victim for having to disclose her address as required on a joint return, disclose information about her bank account, and that given the dynamics of abuse, she would not likely benefit from any refund. See Press Release, Michael Bennet, *Casey Stand Up for Health Care for Domestic Violence Victims*, (Dec. 22, 2011), <https://www.bennet.senate.gov/public/index.cfm/2011/12/bennet-casey-stand-up-for-health-care-for-domestic-violence-victims> [<https://perma.cc/S7SU-S8D7>]. For an overview of this issue, see David S. Mitchell, *An Unhappy Union: Married Taxpayers Filing Separately and the Affordable Care Act's Premium Tax Credit*, 69 TAXL. 453 (2016); see also Eligibility for Premium Tax Credit for Victims of Domestic Abuse, 2014-16 I.R.B. 942 (2014).

<sup>157</sup> Treas. Reg. § 1.36B-2T(b)(2)(ii) (2014).

<sup>158</sup> *Id.*

<sup>159</sup> See I.R.C. § 32(d) (Supp. 2017). Rules prohibit those whose filing status is married filing separately. See also *Do I Qualify for EITC?*, IRS <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/do-i-qualify-for-earned-income-tax-credit-eitc> [<https://perma.cc/6XPP-9AFH>] (last visited July 10, 2019); CTR. ON BUDGET AND POL'Y PRIORITIES, POLICY BASICS: THE EARNED INCOME TAX CREDIT (June 21, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-eitc.pdf> [<https://perma.cc/9HFE-5BWV>] (describing the importance of EITC in raising people out of poverty).

<sup>160</sup> See Mahoney, *supra* note 146, at 5–6.

<sup>161</sup> See IRS, TAX INFORMATION FOR SURVIVORS OF DOMESTIC ABUSE (2017), <https://www.irs.gov/pub/irs-pdf/p3865.pdf> [<https://perma.cc/8NZY-NRZG>] [hereinafter TAX INFORMATION FOR SURVIVORS]; see also Fred B. Brown, *Permitting Abused Spouses to Claim the Earned Income Tax Credit in Separate Returns*, 22 WM. & MARY J. WOMEN & L. 453, 455 (2016).

benefit is complicated.<sup>162</sup> An applicant must live apart and separate from the abuser, a requirement that prejudices a victim for whom separation is either financially impossible or would otherwise expose her to higher levels of violence.<sup>163</sup> She is directed to consult another seventy-nine page IRS publication for guidance as to evidentiary requirements.<sup>164</sup> The worksheet requires her to have access to financial information<sup>165</sup> that might not be available to her, given the dynamic of economic abuse where perpetrators hide documents to prevent the victim from having knowledge of or control over marital or separate funds. Moreover, the exception is limited to three years, after which she will be denied relief.<sup>166</sup>

The EITC's options for victims of domestic violence fare no better. A victim is unlikely to file joint returns, as doing so would require ongoing contact with an abuser and would likely result in a refund that she would not be able to access. The many obstacles to obtaining a divorce may render her ineligible to claim single taxpayer status.<sup>167</sup> Head of household status is also not likely to provide meaningful relief, as it may put her in conflict with the abuser, who may also seek to claim such status; moreover, she may not qualify if she did not live separately from her spouse for more than six months.<sup>168</sup> As one tax expert has explained, "the first option may be undesirable given the particular circumstances surrounding the abuse, and the second and third options may be either unattainable or only attainable by taking steps that may not be in the best interests of an individual from the standpoint of overall well-being."<sup>169</sup>

*(e) Tax Law and Social Policy: Domestic Violence and the Need for Broad Reforms*

Though forward-thinking reforms have been enacted, tax law is of limited use to victims of domestic violence who are economically impacted by the tax code's default filing preferences and who are unlikely to obtain legal assistance with tax

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<sup>162</sup> I.R.S. Form 8962 is a 20-page form with no guidance on qualifying for the PTC. It refers an applicant to a 27-page instruction publication requiring math computation and other information that might be considered intimidating, if not complicated, for most individuals. See IRS, 2018 INSTRUCTIONS FOR FORM 8962, 2 (Dec. 3, 2018), <https://www.irs.gov/pub/irs-pdf/i8962.pdf> [<https://perma.cc/28N4-VKR2>] [hereinafter IRS, FORM 8962]

<sup>163</sup> See Mahoney, *supra* note 146, at 5–6.

<sup>164</sup> See IRS, FORM 8962, *supra* note 162, at 5–6 (referring to IRS publication 974).

<sup>165</sup> *Id.* at 6.

<sup>166</sup> *Id.* at 5.

<sup>167</sup> See Mahoney, *supra* note 146, at 44–49.

<sup>168</sup> Among other types of proof, head of household status requires that the parties have lived apart for more than six months prior to the end of the year. See TAX INFORMATION FOR SURVIVORS, *supra* note 161.

<sup>169</sup> Brown, *supra* note 161, at 455; see also *id.* at 466 (explaining "divorce or maintenance of a separate household may not be feasible from a financial perspective, and qualifying as a head of household would be impossible absent a dependent child").

issues that are complicated to resolve, as explained above.<sup>170</sup> An analysis of the tax code and its impact on the economic consequences of IPV must also extend beyond the particular provisions that purport to address the specific problem related to domestic violence. As some tax policy experts have correctly argued, tax matters are feminist issues which require a broader set of reforms in order to support “gender-responsive public services, social protections, and infrastructure required to fulfill the human rights of all women and achieve gender equality.”<sup>171</sup> Tax reforms must also address the ways that tax policies impact racial and ethnic minorities, as well as single women with disproportionately negative effects.<sup>172</sup> Indeed, any tax reform meant to address domestic violence must also attend to the ways in which tax policy contributes to disparities in income and wealth, and acts to corrode all aspects of family life.<sup>173</sup>

As Anne Alstott has observed, “our politicians hide economic and social policy in the tax code and leave administration to the IRS.”<sup>174</sup> The 2017 Tax Cuts and Jobs Act (“TCJA”)<sup>175</sup> legislation—acknowledged to be “one of the greatest tax transfers of wealth to the rich in modern times”<sup>176</sup>—cannot but exacerbate the underlying

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<sup>170</sup> It is worth noting that tax law and domestic violence law tend to be siloed in their respective fields of practice.

<sup>171</sup> Liz Nelson, *Tax Justice Is a Feminist Issue: Call on Governments to Act*, TAX JUSTICE NETWORK (Mar. 8, 2018), <https://www.taxjustice.net/2018/03/08/tax-justice-is-a-feminist-issue-call-on-governments-to-act/> [<https://perma.cc/XQ3H-F2K2>] (quoting *GATJ Statement 8 March 2018*, GLOBAL ALLIANCE FOR TAX JUSTICE (Mar. 7, 2018), <https://www.globaltaxjustice.org/en/latest/gatj-statement-8-march-2018> [<https://perma.cc/Q27Q-5NTX>]).

<sup>172</sup> Dorothy A. Brown, *Racial Equality in the Twenty-First Century: What’s Tax Policy Got to Do with It?*, 21 U. ARK. LITTLE ROCK L. REV. 759, 768 (1999) (discussing “[t]he federal tax laws’ role in reinforcing societal racism must be . . . challenged and ultimately eliminated.”); Akari Atoyama-Little, *Taxing Single Mothers: A Critical Look at the Tax Code*, 88 N.Y.U. L. REV. 2146, 2181 (2013) (noting that although facially neutral, the tax code favors the idealized “nuclear family” of married parents with children living in homes they own, and denies many benefits to single mothers); Leo P. Martinez, *Latinos and the Internal Revenue Code: A Tax Policy Primer for the New Administration*, 20 HARV. LATINX L. REV. 101, 116 (2017) (observing that white taxpayers are the primary beneficiaries of EITC).

<sup>173</sup> Coker & Macquoid, *supra* note 17, at 593–95, 610 (describing the relationships between policies that make people poorer and their direct impact on increasing rates of domestic violence).

<sup>174</sup> Anne Alstott, *How the Tax Bills Target Good Government, Workers, and Young People*, LAW & POL. ECON. (Nov. 20, 2017), <https://lpeblog.org/2017/11/20/how-the-tax-bills-target-good-government-workers-and-young-people/#more-399> [<https://perma.cc/PEQ2-NZ8J>].

<sup>175</sup> Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (codified as amended in scattered sections of 26 U.S.C. (Supp. 2017)).

<sup>176</sup> Zak Manfredi, *Tax Policy Is Human Rights Policy*, LAW & POL. ECON. (Feb. 1, 2018), <https://lpeblog.org/2018/02/01/tax-policy-is-human-rights-policy/#more-521> [<https://perma.cc/E3Z4-D33X>].

conditions that contribute to gender violence and its relationship to economic strain.<sup>177</sup> The TCJA reduces public sector funding and “literally tax[es] good governance by raising federal taxes on residents of states with robust and ambitious governments.”<sup>178</sup> It drastically reduces taxes on the wealthiest, further depriving public funds needed to sustain government social services, including those upon which domestic violence victims rely.<sup>179</sup> The political economy of tax policies at large have a significant impact on the issue of gender violence and serve to expose the political-economic underpinnings of this and other social problems.<sup>180</sup>

### C. Legal Responses to Economic Abuse at the State Level

#### I. Domestic Violence Protection Orders

Domestic Violence Protection Orders (“DVPOs”) are the most commonly sought remedy to protect a victim from continued violence.<sup>181</sup> Unlike other forms of family law-related relief, victims need not be married to the abuser to seek a remedy, and court-sanctioned forms facilitate the navigation of the process *pro se*.<sup>182</sup> DVPOs can be issued in all states via legislation that provides statutory authority for judges to issue orders with wide-ranging relief.<sup>183</sup> In addition to enjoining further acts or threats of violence, judges may award custody, stipulate visitation, and adjudicate exclusive use of the parties’ residence, as well as require economic relief, including

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<sup>177</sup> See Weissman, *supra* note 12, at 428–430; Shawn F. Greene, *The TCJA and Tax-Exempt Healthcare Organizations*, 30 TAX’N EXEMPTS 23, 23 (Aug. 2018).

<sup>178</sup> See Alstott, *supra* note 174 (explaining that the 2017 tax legislation eliminates the deduction for state and local taxes with implications for those political subdivisions that provide extensive services to their residents).

<sup>179</sup> Greene, *supra* note 177, at 2 (observing the likely impact on tax-exempt health care services).

<sup>180</sup> See Naomi Fowler, *Women, Tax And Equality: Yet Again, The Burden Is Disproportionately Borne by Women*, TAX JUST. NETWORK (Nov. 24, 2016), <https://www.taxjustice.net/2016/11/24/women-tax-equality-yet-burden-disproportionately-borne-women/> [<https://perma.cc/7UCR-BNXX>].

<sup>181</sup> Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1489 (2008) [hereinafter, Goldfarb, *Civil Protection Orders*].

<sup>182</sup> *Self-Representation Resource Guide*, NAT’L CTR. FOR STATE COURTS, <http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/Resource-Guide.aspx> [<http://perma.cc/N9AS-LZDC>] (last updated Sept. 17, 2018); Elizabeth L. MacDowell, *Domestic Violence and the Politics of Self-Help*, 22 WM. & MARY J. WOMEN & L. 203, 214 (2016). *But see* Weissman, *Gender-Based Violence*, *supra* note 46, at 1127–28 (critiquing the use of boilerplate forms).

<sup>183</sup> Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1043–44 (2014); Goldfarb, *Civil Protection Orders*, *supra* note 181, at 1503–04.



child support and spousal support.<sup>184</sup> Notwithstanding questions about the efficacy of DVPOs, studies suggest that such orders are more likely to be of use to victims if a judge orders comprehensive relief that not only enjoins further violence but also remediates the consequences of past violence.<sup>185</sup>

(a) *Domestic Violence Protection Orders and Economic Relief*

For a victim with children, an award of child support as part of a DVPO is often an important factor that determines her ability to exit an abusive relationship.<sup>186</sup> Notwithstanding judges' statutory authority to issue child support orders in DVPO cases, studies demonstrate that few courts address economic matters such as child support.<sup>187</sup> One study found that courts were less likely to award child support compared with other requests for relief.<sup>188</sup> When responding to queries about their refusal to engage in DVPO-related child support matters, judges offered a range of reasons related to "real and perceived institutional constraints," including lack of staff to complete child support guidelines and concern that such a "messy" task

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<sup>184</sup> Heather R. Parker, *Access Denied: The Disconnect Between Statutory and Actual Access to Child Support for Civil Protection Order Petitioners*, 76 U. CIN. L. REV. 271, 280–81 (2007). For a helpful overview of the failure of legislation and courts to address economic abuse, see Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1134–38 (2009).

<sup>185</sup> TK Logan et al., *Protective Orders in Rural and Urban Areas*, 11 VIOLENCE AGAINST WOMEN 876, 906 (2005).

<sup>186</sup> See *Child Support and Domestic Violence*, NAT'L CONF. ST. LEGISLATURES (Nov. 28, 2017), <http://www.ncsl.org/research/human-services/child-support-and-domestic-violence.aspx> [<https://perma.cc/BU9Q-YJ6U>] (“[C]hild support payments can be a critical source of financial stability”); Leigh Goodmark, *Achieving Batterer Accountability in the Child Protection System*, 93 KY. L.J. 613, 634 (2004).

<sup>187</sup> Doug Yearwood et al., N.C. CRIM. JUST. ANALYSIS CTR., DEP'T OF CRIME CONTROL & PUBLIC SAFETY, *Child Support Application Filing Rates and Domestic Violence Protection Order Cases*, SYSTEMSTATS 1 (Summer 2007); SUSAN KEILITZ, SPECIALIZATION OF DOMESTIC VIOLENCE CASE MANAGEMENT IN THE COURTS: A NATIONAL SURVEY 22 (Feb. 5, 2001), <https://www.ncjrs.gov/pdffiles1/nij/grants/186192.pdf> [<https://perma.cc/84PK-K2AA>]; JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES, 128–29 (1999) (noting that judge believed child support as part of a DVPO was unimportant); Sarah M. Buel, *De Facto Witness Tampering*, 29 BERKELEY J. GENDER L. & JUST. 72, 84–85 (2014); Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L. 339, 371 (2014); Mayumi Waddy, *Family Law Restraining Orders and Domestic Violence*, 11 J. CONTEMP. LEGAL ISSUES 87, 90 (2000); Weissman, *Gender-Based Violence*, *supra* note 46, at 1110 n.160 (noting a statewide survey revealing a failure of judges to grant child support and other comprehensive relief).

<sup>188</sup> N.C. CRIM. JUST. ANALYSIS CTR., DEP'T OF CRIME CONTROL & PUBLIC SAFETY, *Dispositional Outcomes of Domestic Violence Ex-Parte and Domestic Violence Protective Orders*, SYSTEMSTATS, 1, 7 (Winter 2002) <https://files.nc.gov/ncdps/div/GCC/systemstats/winter02.pdf> [<https://perma.cc/3VBP-WMDU>].

might fall to them.<sup>189</sup> Some judges do not consider DVPO proceedings a proper forum for considering child support requests despite statutory authority for such relief.<sup>190</sup> Other studies demonstrate that courts consider economic relief unimportant, and limit their attention to threats of physical violence.<sup>191</sup> Professor James Ptacek’s courtroom observations of DVPO proceedings suggest that courts declined to grant economic remedies to poor and working-class women of color for reasons related to race and class bias and stereotyping.<sup>192</sup> Even “innovative” court initiatives, such as Family Service Centers, which seek to combine domestic violence-related governmental and community services in one location, have failed to provide child support services at these centers.<sup>193</sup> Judicial reluctance to consider economic relief as part of a DVPO has induced attorneys to forego such claims and dissuaded lay advocates from encouraging victims to include such requests in their petitions to the court.<sup>194</sup>

(b) *Domestic Violence Protection Order Relief and the Privatized Family*

Whether the issuance of a DVPO with a child support order would provide meaningful relief under any circumstances is a vexed question. While a child support order as part of a DVPO would provide important support in some cases—and courts should be willing to make such orders—there are many circumstances in which child support provides little or no meaningful relief. First, the abuser may suffer the loss of employment as a result of the DVPO process, which is a problem for victims dependent on his income.<sup>195</sup> The failure to pay court-ordered child support is treated

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<sup>189</sup> Parker, *supra* note 184, at 289–90; *see also* Ann E. Freedman, *Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress and the Need for Compassionate Witnesses*, 11 AM. U. J. GENDER SOC. POL’Y & L. 567, 584, 598 n.95 (2003) (noting that as a general matter, there is “anti-victim bias and open hostility toward battered women on the part of judges and court officials”).

<sup>190</sup> Yearwood et al., *supra* note 187, at 1.

<sup>191</sup> Kit Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 190, 206 (1993) (reporting that child support requests are most often denied). *See* Parker, *supra* note 184, at 293 (quoting a judge who did not want to hear child support matters in DVPO cases who stated, “[y]ou’ve got to be able to get back into doing more serious court business in this community”).

<sup>192</sup> PTACEK, *supra* note 187, at 127–133.

<sup>193</sup> *See, e.g.,* Martha Wade Steketee et al., *Implementing an Integrated Domestic Violence Court: Systemic Change in the District of Columbia*, STATE JUST. INST. (June 30, 2000) (reporting that 65% of respondents who participated in a study among victims at the District of Columbia Domestic Violence Intake Center never filed a child support petition). For an overview of Family Justice Centers, *see* Jane Stoeber, *Mirandizing Family Justice*, 39 HARV. J. LAW & GENDER 189 (2016).

<sup>194</sup> Yearwood et al., *supra* note 187, at 10.

<sup>195</sup> Elizabeth L. MacDowell, *Vulnerability, Access to Justice, and the Fragmented State*, 23 MICH. J. RACE & L. 51, 61 (2018).

as a criminal matter with the same outcome.<sup>196</sup> In an ironic twist of circumstances, research demonstrates that fathers unable to pay court-ordered child support thereupon to face contempt charges, increased fines and penalties, if not jail time, often appeal for financial assistance from their families.<sup>197</sup> In these circumstances, the victim herself, who for various reasons wishes to avoid the possibility of his incarceration, often agrees to provide monetary support to the perpetrator.<sup>198</sup>

Second, the DVPO process may not only fail to provide economic relief, but also may exacerbate a victim's economic circumstances. Victims seeking a DVPO may suffer a monetary loss as a result of time away from employment to attend court or other disruptions associated with seeking relief, losses that studies demonstrate are rarely recouped.<sup>199</sup> The financial price for protection often worsens a woman's earning inequality and increases economic insecurity.<sup>200</sup>

Third, the potential for increased violence associated with the pursuit of child support has been an issue about which much has been written.<sup>201</sup> Some abusers will

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<sup>196</sup> See, e.g., Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1016 (2000) (describing a Miami-Dade ordinance that required the clerk of the court to notify a perpetrator's employer of a conviction of domestic violence offense, which often resulted in "direct and predictable harm for poor women of color" due to the disproportionate impact of the ordinance on poor men and men of color); Kathryn Edin, *Child Support in the Age of Complex Families*, 34 ISSUES OF SCIENCE AND TECHNOLOGY (Winter 2018) (noting that one study found that "12%-13%—roughly one out of eight—nonmarital children covered by a child support order had seen their father incarcerated for nonpayment of child support by the time they reached age nine"); Cortney E. Lollar, *Criminalizing (Poor) Fatherhood*, 70 ALA. L. REV. 125, 127–28 (2018) (providing an overview of instances where states criminally prosecute parents for failure to pay child support); see also Elizabeth G. Patterson, *Turner in the Trenches: A Study of How Turner v. Rogers Affected Child Support Contempt Proceedings*, 25 GEO. J. ON POVERTY L. & POL'Y 75, 87 (2017).

<sup>197</sup> MITALI NAGRECHA ET AL., CTR. FOR CMTY. ALTERNATIVES, WHEN ALL ELSE FAILS, FINING THE FAMILY 19–20, 23 (2014), <http://www.communityalternatives.org/pdf/Criminal-Justice-Debt.pdf> [<https://perma.cc/ZW95-YNUV>].

<sup>198</sup> *Id.* at 24.

<sup>199</sup> Hughes & Brush, *supra* note 37, at 158 (demonstrating the "tremendous earnings instability and financial costs for PFA petitioners").

<sup>200</sup> *Id.* at 159.

<sup>201</sup> This article does not elaborate on the heightened dangers of pursuing child support as there has been voluminous writings about this topic. See, e.g., Stacy Brustin & Lisa Vollendorf Martin, *Paved with Good Intentions: Unintended Consequences of Federal Proposals to Integrate Child Support and Parenting Time*, 48 IND. L. REV. 803 (2015); Ann Cammett, *Expanding Collateral Sanctions: The Hidden Costs of Aggressive Child Support Enforcement Against Incarcerated Parents*, 13 GEO. J. POVERTY L. & POL'Y 313 (2006); CASEY ET AL., *supra* note 100, at 14–15; Parker, *supra* note 184, at 287 (demonstrating increased violence for victims in states with strict child support enforcement laws that also require paternity testing); see also Naomi Stern, *Battered by the System: How Advocates Against Domestic Violence Have Improved Victims' Access to Child Support and TANF*, 14 HASTINGS WOMEN'S L.J. 47, 54–55 (2003).

increase their violence in response to receiving a child support order, a problem well documented in the literature that cautions against forcing victims to reveal to TANF the names of the father of their children.<sup>202</sup> Indeed, Congress recognized the dilemma by providing states the option to allow welfare victims to seek a waiver of the child support enforcement cooperation requirement.<sup>203</sup>

Fourth, legal responses to social concerns involving families must consider larger structural concerns regarding economic inequality and the lives people actually lead. The effectiveness of DVPOs with child support orders must be analyzed in a larger context of the law's treatment of families as privatized and self-sufficient units for which the state has eschewed responsibility.<sup>204</sup> As noted above, fathers are often criminalized for being indigent, and courts often fail to differentiate between those who will not pay and those who cannot.<sup>205</sup> Other structural barriers to stable employment, including educational opportunities and housing, particularly for men of color, are concerns far removed from laws pertaining to child support.<sup>206</sup>

Child support is essential to leaving abusive relationships. Not as clear, however, is who pays, how much, and in what form. Proposals have been made for a child support assurance plan for all children as an add on to social security, in a system that would resemble European models that offer guaranteed state-paid child support payments; but these proposals have gained no traction in the United States.<sup>207</sup> As Jill Hasday has written, “[t]he family law canon treats family law and welfare law as wholly separate categories.”<sup>208</sup> The punitive focus on fathers who fail to pay support without consideration of the structural circumstances that shape poverty is detrimental to both parents and children. Professor Daniel Hatcher has aptly written, “[a]lthough we may crave to line up on one side of the fight, the reality

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<sup>202</sup> Brustin & Vollendorf Martin, *supra* note 201, at 837–841.

<sup>203</sup> See 42 U.S.C. § 602(a)(7)(A)(iii) (2012).

<sup>204</sup> For an overview of the failures of the state to support families, see MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA'S POLITICAL IDEALS* (2010).

<sup>205</sup> See Lollar, *supra* note 196, at 127–28; Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991, 1003 (2006); see also KATHRYN EDIN & TIMOTHY J. NELSON, *DOING THE BEST I CAN: FATHERHOOD IN THE INNER CITY* 41–42 (2013).

<sup>206</sup> See Hillard Pouncy, *Towards a Fruitful Policy Discourse About Less-Educated Young Men*, in *BLACK MALES LEFT BEHIND* 293, 301 (Ronald B. Mincy ed., 2006) (noting insufficient efforts toward incorporating young poor men into the job market—still leaving them unemployed). This is particularly the case for young black men. See Ronald B. Mincy & Hillard Pouncy, *Fatherhood Programs May Lift Up Young Men*, *DESERET NEWS* (Apr. 17, 2006), <https://www.deseret.com/2006/4/17/19948598/fatherhood-programs-may-lift-up-young-men> [<https://perma.cc/F9ML-DKQT>].

<sup>207</sup> Martha A. Fineman, *Progress and Progression in Family Law*, 2004 U. CHI. LEGAL F. 1, 21 (2004); Bryce Covert, *The Brilliant Idea from Europe that Could Revolutionize Child Support*, *THINK PROGRESS* (Apr. 16, 2015), <http://thinkprogress.org/economy/2015/04/16/3647872/walter-scott-child-support/> [<https://perma.cc/S462-W4D5>].

<sup>208</sup> Jill Elaine Hasday, *The Canon of Family Law*, 57 STAN. L. REV. 825, 832 (2004).

is that there are no sides. Low-income mothers and fathers simply do not all fit within current theoretical or politically themed boxes.”<sup>209</sup>

## 2. Family Law Property and Spousal Support Regimes

Family law statutes govern the distribution of assets between intimate partners when their relationships end. In addition to child support, property distribution and spousal support are the primary mechanisms by which courts allocate resources between divorcing spouses.<sup>210</sup> Courts may also allocate responsibility for joint debts.<sup>211</sup> A victim of domestic violence may have acquired assets to distribute upon divorce, for example: a home, automobiles, bank accounts, and pensions.

### (a) Obtaining Family-Law Related Economic Relief: Access and Obstacles

Access to family court is often the first challenge to victims of domestic violence seeking an allocation of assets and debt. Like many family law litigants, a victim of domestic violence may be unable to afford an attorney.<sup>212</sup> Without an attorney, she will face significant obstacles to seeking a distributive award of assets. Some, but not all, judicial districts have made available *pro se forms* in divorce cases. However, court clerks report that *pro se* litigants have difficulty using them and family law attorneys express concern that vulnerable spouses without legal

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<sup>209</sup> Daniel L. Hatcher, *Don't Forget Dad: Addressing Women's Poverty by Rethinking Forced and Outdated Child Support Policies*, 20 AM. U. J. GENDER SOC. POL'Y & L. 775, 777 (2012); see also Reginald Mombrun, *An End to the Deadbeat Dad Dilemma?—Puncturing the Paradigm by Allowing a Deduction for Child Support Payments*, 13 FORDHAM J. CORP. & FIN. L. 211, 215–16 (2008) (decrying the use of the term “deadbeat dad” or “deadbeat parent”).

<sup>210</sup> For non-married couples, the judicial avenues for asset distribution fall outside of the traditional family law statutes; these families must resort to contractual arrangements or equitable theories such as purchase money or constructive trusts, matters outside the scope of this article.

<sup>211</sup> See generally Margaret M. Mahoney, *The Equitable Distribution of Marital Debts*, 79 UMKC L. REV. 445 (2010) [hereinafter Mahoney, *Marital Debts*] (analyzing the common law property laws that govern responsibility for the payment of individual and joint debts).

<sup>212</sup> Bibeane Metsch-Garcia, *Eliminating Financiers from the Equation: A Call for Court-Mandated Fee Shifting in Divorces*, 113 MICH. L. REV. 1271, 1292 (2015) (noting how “extremely costly” to obtain counsel, even if they lack substantial assets to quarrel over); Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 166, 199–200 (2012) (noting that “[i]t is not just the poor” who cannot afford to hire an attorney but that the inability to afford counsel extends to “the middle class,” or “individuals of ordinary means”) (internal quotations omitted).

counsel may be exploited when seeking relief without representations.<sup>213</sup> In those circumstances where an abused spouse succeeds in filing for divorce-related relief, she will face the additional challenge of judicial bias because of her gender as well as the nature of family law claims deemed by judges to be “low status cases.”<sup>214</sup> When domestic violence is an added complication, bias toward such claims further disadvantages the litigant.<sup>215</sup>

Courts often give little weight to allegations of domestic violence when determining the equitable allocation of resources at divorce or separation. This is an outcome of the shift in family law from an emphasis on “fault” as a paramount factor shaping distribution decisions to the premises of “no-fault” and the ways that courts understand “gender neutrality.”<sup>216</sup> As Professor Jill Hasday describes, state legislatures have absolved courts of the need to be concerned with women’s economic positions following divorce:

Courts have also relied on the premise that women’s legal subordination under coverture has been excised from family law in concluding that divorce law no longer needs to be worried about divorced women’s status. They explain, for instance, that the former complete protective role of the court regarding alimony is no longer necessary because [t]he law formerly attaching . . . subjection to the legal status of a married woman has been abolished either by legislation or by the continuous pressure of judicial interpretation.<sup>217</sup>

Such a rationale tends to obscure the impact of economic abuse as a consequence of IPV; moreover, as Hasday observes, such pronouncements are premature.<sup>218</sup> Studies continue to demonstrate that, with regard to economic

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<sup>213</sup> Jessica Dixon Weaver, *Overstepping Ethical Boundaries? Limitations on State Efforts to Provide Access to Justice in Family Courts*, 82 FORDHAM L. REV. 2705, 272–23 (2014).

<sup>214</sup> Jessica Pearson, *Court Services: Meeting the Needs of Twenty-First Century Families*, 33 FAM. L.Q. 617, 630 (1999) (noting the low status of family law cases); Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People’s Courts*, 22 GEO. J. POVERTY L. & POL’Y 473, 496 (2015); Jessica K. Steinberg, *Adversary Breakdown and Judicial Role Confusion in “Small Case” Civil Justice*, BYU L. REV. 899, 965 n.283 (2016).

<sup>215</sup> See Laura Gatland, *Courts Behaving Badly*, 83 A.B.A. J. 30, 31 (1997); Weissman, *Gender-Based Violence*, *supra* note 46, at 1118 (noting that judges often act upon domestic violence issues as less important, private, and not the courts’ concerns).

<sup>216</sup> Jill Elaine Hasday, *The Canon of Family Law*, 57 STAN. L. REV. 825, 835–36 (2004). This shift is predicated on a “canonical understanding of the relationship between family law and social inequality” that assumes that women no longer suffer inequality before the law. *Id.* at 830.

<sup>217</sup> *Id.* at 867–869 (internal quotations and citations omitted).

<sup>218</sup> *Id.* at 870.

measures following divorce, women fare poorly and disproportionately so when compared to men.<sup>219</sup>

With the shift from marital misconduct and protection of the spouse against ongoing economic harm to no-fault divorces and equitable distribution, domestic violence has been perceived as irrelevant and thus no longer considered an issue for inquiry by family law attorneys.<sup>220</sup> The Chief Reporter of the American Law Institute's Principles of the Law of Family Dissolution has disputed the need to include domestic violence as a consideration in property distribution.<sup>221</sup> Drafters of the Uniform Law for Premarital and Marital Agreements eliminated specific references to domestic violence as a factor in spousal support matters in the belief that spouses could rely on the more general heading of "substantial hardship," notwithstanding the optional nature of such provision.<sup>222</sup>

When a victim of abuse does raise domestic violence as a factor that weighs in her favor for a greater distribution, she may be referred to alternative dispute mechanisms.<sup>223</sup> As a result, domestic violence as a factor bearing on distribution of assets is rarely heard by judges.<sup>224</sup> On those few occasions when the issue of domestic violence, as pertinent to spousal support claims, does reach the court for adjudication, judges have outright rejected the issue as inappropriate for consideration in reliance of no-fault statutes.<sup>225</sup> Where courts are authorized to

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<sup>219</sup> See, e.g., Yitshak Cohen, *Issues Subject to Modification in Family Law: A New Model*, 62 DRAKE L. REV. 313, 360 (2014); Pamela Laufer-Ukeles, *Selective Recognition of Gender Difference in the Law: Revaluating the Caretaker Role*, 31 HARV. J. L. & GENDER 1, 5 n.13 (2008); Catharine A. MacKinnon, *Toward a Renewed Equal Rights Amendment: Now More than Ever*, 37 HARV. J. L. & GENDER 569, 579 (2014).

<sup>220</sup> The Family Violence Project of the National Council of Juvenile and Family & Court Judges, *Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice*, 29 FAM. L.Q. 197, 212 (1995).

<sup>221</sup> Cheryl J. Lee, *Escaping the Lion's Den and Going Back for Your Hat - Why Domestic Violence Should Be Considered in the Distribution of Marital Property upon Dissolution of Marriage*, 23 PACE L. REV. 273, 299–300 (2002); see also NAT'L CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS; UNIFORM MARRIAGE AND DIVORCE ACT § 308, NAT'L CONFERENCE OF COMMISSIONERS ON UNIF. STATE LAWS (1970), <http://www.uniformlaws.org/shared/docs/Marriage%20and%20Divorce%20Act/UMDA%201973.pdf> (containing no provisions considering domestic violence or fault); Michelle L. Evans, *Wrongs Committed During a Marriage: The Child that No Area of the Law Wants to Adopt*, 66 WASH. & LEE L. REV. 465, 466–67, 481 (2009).

<sup>222</sup> Barbara A. Atwood & Brian H. Bix, *A New Uniform Law for Premarital and Marital Agreements*, 46 FAM. L.Q. 313, 334–35, 342 (2012).

<sup>223</sup> Pearson, *supra* note 214, at 621, 626.

<sup>224</sup> Camille Carey, *Correcting Myopia in Domestic Violence Advocacy: Moving Forward in Lawyering and Law School Clinics*, 21 COLUM. J. GENDER & L. 220, 259 (2011).

<sup>225</sup> Ali Kunen, *Divorce and Domestic Violence in the United States: A Focus on New York State's Adoption of No-Fault Legislation and Its Impact on the Incidence of Domestic Violence*, 11 CARDOZO PUB. L. POL'Y & ETHICS J. 353, 365 (2013). Kunen's article appeared before the amendment of New York State's Domestic Relations law that now allows for

consider the abuse in the more general category of “marital fault,” victims are required to show that the violence was “egregious,” a standard that in one case was not met despite evidence of twenty-seven incidents of physical assault.<sup>226</sup> In the few states where domestic violence remains a statutory consideration in establishing distribution awards, it is only one factor balanced against the victim’s economic self-sufficiency.<sup>227</sup> Thus, a victim who has continued working, despite having suffered economic abuse, may be penalized for her efforts to minimize her harm.<sup>228</sup>

Finally, victims of domestic violence may fare no better with regard to the distribution of debts in family court. As Professor Angela Littwin has explained:

for practical purposes, divorce decrees only have the authority to divide assets, not debts. Even if a divorce court decides that an abusive spouse is responsible for paying a debt he has fraudulently or coercively incurred in the survivor's name, creditors still consider the survivor liable, so a division of debt favoring her will be only a paper victory.<sup>229</sup>

Moreover, family courts have been reluctant to allocate responsibility for debts in divorce matters.<sup>230</sup>

*(b) The Failure of Family Law Distribution Schemes: Private not Public*

The analysis above demonstrates courts’ lack of willingness to award economic relief to victims of IPV even when laws authorize such relief. However, the critique of the legal response to economic abuse is only in part related to the failure of the courts to apply statutory relief. In fact, existing laws fail to provide more than

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consideration of domestic violence, one of the few states that does so. Whether the amendments are sufficiently protective are questionable given the somewhat limited definition of domestic violence. *See* N.Y. DOM REL. L. § 236(B)(6)(e)(1)(g); N.Y. SOC. SERV. L. § 459-a(1) (defining “victim of domestic violence”); *see also* Andrea B. Carroll, *Family Law and Female Empowerment*, 24 UCLA WOMEN’S L.J. 1, 27 (2017) (noting that only a handful of states specifically include domestic violence as a factor in spousal support matters).

<sup>226</sup> Lee, *supra* note 221, at 286, 288; Edward S. Snyder & Laura W. Morgan, *Domestic Violence Ten Years Later*, 19 J. AM. ACAD. MATRIM. L. 33, 53 (2004).

<sup>227</sup> Carroll, *supra* note 225, at 28.

<sup>228</sup> *Id.* (observing that proving domestic violence does not mean that spousal support will be ordered); Lee, *supra* note 221, at 290.

<sup>229</sup> Littwin, *supra* note 10, at 957 (citation omitted).

<sup>230</sup> Mahoney, *Marital Debts*, *supra* note 211, at 446; *but see* Scott Thistle, *Bill Would Protect Domestic Violence Survivors from Economic Toll that Abusers Take*, PORTLAND PRESS HERALD (Apr. 2, 2019), [https://www.pressherald.com/2019/04/02/bill-would-protect-domestic-violence-survivors-from-economic-abuse/?fbclid=IwAR3uc8oPrW\\_iuouJOjHwxfgSzfV2YuoK4sFGPpzRI6sjvBCmdL11CLQC7yY](https://www.pressherald.com/2019/04/02/bill-would-protect-domestic-violence-survivors-from-economic-abuse/?fbclid=IwAR3uc8oPrW_iuouJOjHwxfgSzfV2YuoK4sFGPpzRI6sjvBCmdL11CLQC7yY) [http://perma.cc/JD2J-ZC6C] (describing a bill introduced into the Maine state legislature that “aimed at freeing survivors from bad debts racked up by their abusers”).



nominal redress for the consequences of abuse and offer no remedy to the structural sources of the problem. Spousal support payments may serve to maintain ties between the parties, an obvious concern for victims wishing to exit from the relationship. Perhaps less obvious but just as troublesome—and not dissimilar to the failures of child support enforcement regimes discussed above—frequently, there is simply not enough to meet the family’s needs.<sup>231</sup> And there is little law that considers and remedies the structural causes of these private dilemmas. Professor Maxine Eichner has aptly described these circumstances: “The family in the United States is often considered private, but increasingly it has become privatized.”<sup>232</sup>

Distribution claims, as Professor Anne Alstott has observed, are often a “zero-sum struggle for resources,” pointing out that “[i]ndividuals have no right to the resources they need to marry, to divorce, or even to remain alive (a rather obvious prerequisite to family life).”<sup>233</sup> Family law is private law, Alstott reminds her readers, and does not invoke the resources of the state to provide for the needs of family members where the pot of resources to distribute is insufficient for their wellbeing.<sup>234</sup> Domestic violence does not modify that condition. As Alstott points out, that distribution, however allocated, has few benefits for poor and low-earning families.<sup>235</sup> Similarly, Joan Williams has argued that without assets, “no property division rule will make a substantial difference in economic well-being after divorce.”<sup>236</sup> Indeed, most divorcing couples do not have sufficient assets to divide or otherwise ameliorate economic pressures.<sup>237</sup> Yet the dominant market-driven norms have shaped the contours of how family law presumes that divorcing couples should survive—through self-reliance—even when self-reliance is sabotaged by social ills such as domestic violence.<sup>238</sup>

Family law as a mechanism to distribute assets to mitigate IPV is ineffective because it fails to consider the structural circumstances that contribute to domestic violence in the first place. Additionally, the law fails to address the need for a better

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<sup>231</sup> Alstott, *supra* note 107, at 29.

<sup>232</sup> Maxine Eichner, *The Privatized American Family*, 93 NOTRE DAME L. REV. 213, 214 (2017).

<sup>233</sup> Anne L. Alstott, *Private Tragedies? Family Law as Social Insurance*, 4 HARV. L. & POL’Y REV. 3, 3 (2010) [hereinafter Alstott, *Private Tragedies?*].

<sup>234</sup> *Id.* at 4.

<sup>235</sup> *Id.* at 15.

<sup>236</sup> Joan Williams, *Is Coverture Dead? Beyond a New Theory of Alimony*, 82 GEO. L.J. 2227, 2232 (1994).

<sup>237</sup> Marsha Garrison, *Good Intentions Gone Awry: How New York’s Equitable Distribution Law Affected Divorce Outcomes*, 57 BROOK. L. REV. 621, 730 (1991); Littwin, *supra* note 10, at 957 (“courts cannot compensate for coerced debt by allocating the victim additional assets, because there are not enough assets to cover the debts”).

<sup>238</sup> EICHNER, *supra* note 204, at 216 (arguing that “the distribution of conditions necessary for sound families is a basic responsibility of government”); Hasday, *supra* note 208, at 835–836; Williams, *supra* note 236, at 2235–36.

welfare state that would meaningfully improve the lives of all family members.<sup>239</sup> Certainly, there is a need for the law's expressive purpose in formulating a moral judgment with regard to the breakdown of a marriage due to the actions of a perpetrator of IPV. Given the political economy of poverty, however, private solutions whereby the courts attempt to allocate marital assets will never be sufficient.<sup>240</sup> Some commentators have called for a welfare program that provides "a guaranteed and decent basic income for all, policies of management and cooperative business [that] can develop and open up new 'human services for human beings.'"<sup>241</sup> But as Professor Susan Appleton observes, in the United States, family law and welfare law are both "preoccup[ied] with 'personal responsibility.'"<sup>242</sup> Without greater public protections to address the determinants and consequences of domestic violence, family breakdown, and support for families generally, family law decisions will likely inflict suffering on one party or the other.<sup>243</sup>

#### D. Concluding on the Law's Weaknesses

Laws at the federal and state level provide courts with the authority to mitigate the economic abuse suffered by victims of IPV. Yet, the analysis in this Part demonstrates the failure to enact such remedies. Whether because of gender animus toward victims or the disregard for family law matters, including IPV as important legal claims, victims are unlikely to obtain relief through the exercise of judicial power. In matters pertaining to the economic consequences of domestic violence, the law often assumes a "neutral" stance, leaving a victim to benefit or not in the realm of the private. But the law is anything other than neutral in the configuration of an economic system that exacerbates gender violence.<sup>244</sup> A political-economic

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<sup>239</sup> See generally MAXINE EICHNER, *THE FREE-MARKET FAMILY: HOW THE MARKET CRUSHED THE AMERICAN DREAM (AND HOW IT CAN BE RESTORED)* (forthcoming Dec. 2019) (observing the problematic relationship between economic forces and families).

<sup>240</sup> See Ayelet Hoffmann Libson, *Not My Fault: Morality and Divorce Law in the Liberal State*, 93 TUL. L. REV. 599, 639 (2019) (stating that "[t]aking marital misconduct into account in divorce law defines which spousal behaviors are legitimate and which are not.").

<sup>241</sup> Antonio Negri & Raúl Sánchez Cedillo, *For a New Experience of Economic Government: A Call to Podemos*, TRANSVERSAL (Mar. 2015), <http://transversal.at/blog/A-call-to-Podemos> [<https://perma.cc/U5A7-AMAV>] (calling for a welfare program that provides "a guaranteed and decent basic income for all, policies of management and cooperative business [that] can develop and open up new 'human services for human beings'").

<sup>242</sup> Susan Frelich Appleton, *How Feminism Remade Family Law (and How It Did Not)*, in RESEARCH HANDBOOK ON FEMINIST JURISPRUDENCE 426, 440 (Robin West & Cynthia Grant Bowman eds., 2019).

<sup>243</sup> Alstott, *Private Tragedies?*, *supra* note 233, at 3.

<sup>244</sup> See Christine Schwöbel-Patel, *Neoliberalism: From Law to Resistance*, LAW & POL. ECON. (Apr. 9, 2019), <https://lpeblog.org/2019/04/09/neoliberalism-from-law-to->

analysis of legal remedies designed to provide relief in these matters demonstrates that larger socio-legal and structural changes are required before the law has the capacity to remedy the problem of domestic violence in ways that redistributes power and resources in order to inure to the wellbeing of families and communities.<sup>245</sup>

### III. DOMESTIC VIOLENCE PROGRAM POLICIES: “ECONOMIC JUSTICE INITIATIVES”

In addition to reliance on the legal system for relief, domestic violence advocates have engaged in reflective rethinking about new strategies to address intersecting issues related to gender violence.<sup>246</sup> The social science scholarship has directed attention to the relevance of poverty and economic concerns to domestic violence; forms of economic abuse have been recognized as a means of subjugation with devastating and enduring consequences.<sup>247</sup> To be sure, academics and advocates have increasingly questioned the efficacy of the carceral state as a response to gender-based violence, noting that the criminal justice system, if not the legal system more generally, has failed to serve the needs of communities of color, the poor, immigrants, the disabled, and LGBTQ persons.<sup>248</sup> But the mainstream anti-domestic violence movement has yet to develop a political-economic analysis adequate to counterbalance the default reliance on the criminal justice system.<sup>249</sup>

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resistance/#more-2206 [https://perma.cc/44NG-BPNR] (commenting that law “is deeply implicated in inequality today”).

<sup>245</sup> See David Singh Grewal, Amy Kapczynski & Jedediah Purdy, *Law and Political Economy: Toward a Manifesto*, LAW & POL. ECON. (Nov. 6, 2017), https://lpeblog.org/2017/11/06/law-and-political-economy-toward-a-manifesto/ [https://perma.cc/88UF-SLZ5].

<sup>246</sup> See generally Coker et al., *supra* note 15 (seeking to “refocus United State priorities in funding, activism, legal responses, and social services” to better address gender violence).

<sup>247</sup> See Rebecca Miles-Doan, *Violence Between Spouses and Intimates: Does Neighborhood Context Matter?*, 77 SOC. FORCES 623, 623–25 (1998); see also Michael L. Benson et al., *Violence in Families: The Intersection of Race, Poverty, and Community Context*, in 2 FAMILIES, CRIME, AND CRIMINAL JUSTICE 91, 91 (Greer Litton Fox & Michael L. Benson eds., 2000); Gary L. Bowen et al., *Neighborhood Characteristics and Supportive Parenting Among Single Mothers*, in 2 FAMILIES, CRIME, AND CRIMINAL JUSTICE 183, 184–85 (Greer Litton Fox & Michael L. Benson eds., 2000); Judy A. Van Wyk et al., *Detangling Individual-, Partner-, and Community-Level Correlates of Partner Violence*, 49 CRIME & DELINQ. 412, 413–14 (2003). A National Institute of Justice study demonstrated the role that different neighborhood conditions (particularly those conditions that relate to poverty and economic stress) play in producing domestic violence. See Fox & Benson, *supra* note 13, at 1–6.

<sup>248</sup> See *supra* notes 15 and 16.

<sup>249</sup> Goldscheid, *supra* note 1, at 624–25. For example, the National Organization to End Domestic Violence advertised its 2018 annual conference with events that mostly focus on criminal justice strategies and actors. See *18th Annual International Family Justice Center Conference*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE (Apr. 24, 2018), https://ncadv.org/Default.aspx?p=157567&evtid=688264:4/24/2018 [https://perma.cc/69B9

Nonetheless, the strength of the data emphasizing the relationship between economic factors and domestic violence has resulted in a near-obligatory shift in domestic violence agency services.<sup>250</sup>

As set forth in Part I, the legal system fails to provide adequate economic reparations. Many anti-violence advocates promote nonlegal interventions in response to the weaknesses of the legal system.<sup>251</sup> A number of agencies now program “economic justice initiatives” dedicated to “financial literacy” and “financial empowerment” to assist with budgeting, credit problems, and credit worthiness.<sup>252</sup> The development of these initiatives, however, has been an uneven process; and the initiatives vary in terms of the theories and norms they advance.

This Part begins with an overview of the personal financial industry as it relates to domestic violence victims and financial literacy curricula. It then examines the prototype approach to “financial empowerment,” which relies on a financial literacy curriculum adopted by domestic violence programs. It argues that the dominant financial literacy curriculum is flawed and renders remedies as an issue of personal

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-GDSU]; *see also About the Conference*, CONFERENCE ON CRIMES AGAINST WOMEN, <http://www.conferencecaw.org/> [<https://perma.cc/DBB2-9G9P>] (last visited July 21, 2019); *2018 Symposium*, MONT. STATE U., <https://chsculture.org/outreach-events/symposium-2018> [<https://perma.cc/DBB2-9G9P>] (last visited July 21, 2019) (promoting workshops that focus “safety citizenship” and “risky behaviors” at <https://chsculture.org/outreach-events/symposium-2018>); Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 LAW & POL’Y 205, 208, 223 (1997) (critiquing the anti-domestic violence movement for its failure to engage in the welfare debate).

<sup>250</sup> *See supra* Section I.A.

<sup>251</sup> *See, e.g., Working Together to End Homelessness for Domestic and Sexual Violence Survivors and Their Families*, SAFE HOUSING PARTNERSHIPS, <https://safehousingpartnerships.org/> [<https://perma.cc/NTZ2-BG58>] (last visited July 21, 2019); *Workplace Safety & Equity*, FUTURES WITHOUT VIOLENCE, <https://www.futureswithoutviolence.org/workplace-safety-equity/> [<https://perma.cc/HK4G-S43W>] (last visited July 21, 2019).

<sup>252</sup> *See FCADV Economic Justice Initiative’s Economic Empowerment Advocate Toolkit*, FLA. COALITION AGAINST DOMESTIC VIOLENCE, <https://www.fcadv.org/projects-programs/fcadv-economic-justice-initiative%E2%80%99s-economic-empowerment-advocate-toolkit> [<https://perma.cc/4DCV-HZCA>] (last visited July 22, 2019). A review of all state coalitions identified on the Office of Violence Against Women’s webpage found that at least 15 state coalitions prominently advertise economic justice initiatives on their webpage (on file with author). The Allstate Foundation has produced a financial management/literacy program for victims of domestic violence which has been adopted by nearly all state coalitions and note that they have “trained more than 8,600 service providers, representing more than 1,600 nonprofit organizations to help them deliver best-in-class financial literacy and asset building programs to domestic violence survivors in all 50 states.” *See* Sangeeta Waldron, *Allstate Foundation “Purple Purse” Campaign Empowers Survivors of Domestic Violence*, JUST MEANS (Nov. 9, 2015, 3:30AM), <http://justmeans.com/blogs/allstate-foundation-purple-purse-campaign-empowers-survivors-of-domestic-violence> [<https://perma.cc/W3KM-9NUU>].

responsibility, thereby obscuring the political-economic issues central to the economic wellbeing of domestic violence victims.

The critique presented in this Part, to borrow a phrase from Professors Alice Miller and Mindy Roseman, “is offered in the spirit of constructive provocation.”<sup>253</sup> It is not meant to suggest that current program policies are regressive or without value. Indeed, many programs attend to intersectional issues affecting the LGBTQ community, African American victims, immigrant families, and sex workers; some programs maintain bilingual websites.<sup>254</sup> But agencies that propound a curriculum based on the premise of a victim empowerment folklore within a culture of self-help ignore the structural dimensions of debt and offer chimerical solutions to the structural problems of debt and society.<sup>255</sup> They are more likely to subject victims to market forces that are often the very obstacles to solutions.

*A. Personal Financial Industry or Poverty Industry? Possibilities of Economic Empowerment*

The term “personal financial industry” refers to the mechanisms and products by which individuals, primarily as consumers, are tasked with creating their own wealth and exercising responsibility for managing assets and debts.<sup>256</sup> Access to loans and incurring debt have developed into an important means of subsistence, particularly as prospects for stable employment diminish and give way to unemployment/underemployment, flexibilization of the labor market, and a lack of real wage growth.<sup>257</sup> Consumer debt has become pervasive and, as one scholar has

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<sup>253</sup> Alice M. Miller & Mindy J. Roseman, *Sexual and Reproductive Rights at the United Nations: Frustration or Fulfillment*, 19 REPRODUCTIVE HEALTH MATTERS 102, 103 (2011).

<sup>254</sup> Some state coalitions use problematic financial literacy curricula while working at the intersection of other progressive issues. See *Recent News Information*, ARIZ. COALITION AGAINST DOMESTIC VIOLENCE, <http://www.acesdv.org/> [<https://perma.cc/3VDV-6EZ4>] (last visited July 21, 2019) (discussing transphobia and sexual violence); see also IOWA COALITION AGAINST DOMESTIC VIOLENCE, <http://www.icadv.org/> [<https://perma.cc/TG2A-5U56>] (last visited July 21, 2019) (discussing reproductive rights); THE ME. COALITION TO END DOMESTIC VIOLENCE, <https://www.mcedv.org/> [<https://perma.cc/CJ85-2KF9>] (last visited Oct. 10, 2019); *What We Do*, NEB. COALITION TO END SEXUAL AND DOMESTIC VIOLENCE, <https://www.nebraskacoalition.org/> [<https://perma.cc/KDM6-XY3>] (last visited July 21, 2019) (providing support for immigrants families and Dreamers).

<sup>255</sup> See *infra* notes 289–303 and accompanying text.

<sup>256</sup> HELAINE OLEN, POUND FOOLISH: EXPOSING THE DARK SIDE OF THE PERSONAL FINANCIAL INDUSTRY 6 (2012); Arthur, *supra* note 33, at 3.

<sup>257</sup> See Katherine V.W. Stone, *Flexibilization, Globalization, and Privatization: The Three Challenges to Labor Rights in Our Time*, 44 OSGOODE HALL L.J. 1 (2006) [http://www.laborstandards.org/Wpapers/Stone\\_01-05.pdf](http://www.laborstandards.org/Wpapers/Stone_01-05.pdf) [<https://perma.cc/PX4D-P3XV>] (“Flexibilization refers to the changing work practices by which firms no longer use internal labor markets or implicitly promise employees lifetime job security, but rather seek flexible employment relations that permit them to increase or diminish their workforce, and reassign and redeploy employees with ease.”); Drew Desilver, *For Most U.S. Workers, Real Wages*

observed, “has become the last hope for avoiding, reducing, or at least delaying the pain of marginalization.”<sup>258</sup> Financial institutions often snare vulnerable and often ill-informed borrowers, at times engaging in dubious practices designed to obscure the difficulties associated with high-interest loans rising to the level of usury.<sup>259</sup> Debt as a way of life has become something of a cultural phenomenon and functions as a means of social control.<sup>260</sup> Financial deregulation has “spawned various species of hyper-usury whereby consumer credit risk and national credit ratings have themselves become tradeable objects. Debt is no longer a means to purchase commodities; it is a commodity itself, fully fungible in the marketplace” and contributing to the worst aspects of consumer society.<sup>261</sup>

### 1. *Indebtedness, Gender, and Domestic Violence*

Indebtedness is one of the principal sources of conflict for couples and often a major source of stress for victims of domestic violence, many of whom face indigence at the time they seek services.<sup>262</sup> Household indebtedness has soared, particularly as credit and debts replace wages as a principal means of family subsistence.<sup>263</sup> Scholars have observed that the damaging effects of debt as a way of

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*Have Barely Budgeted in Decades*, PEW RESEARCH CTR. (Aug. 7, 2018), <http://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budgeted-for-decades/> [<https://perma.cc/KV6P-8TFU>]; Jocelyn Mangan, *How Employers Can Attract the Best Workers in the New Flexible Labor Market*, FORBES (Mar. 23, 2018), <https://www.forbes.com/sites/forbeshumanresourcescouncil/2018/03/23/how-employers-can-attract-the-best-workers-in-the-new-flexible-labor-market/#2ca7e6b13c39> [<https://perma.cc/KTR2-KETM>].

<sup>258</sup> SUSANNE SOEDERBERG, *DEBTFARE STATES AND THE POVERTY INDUSTRY 1* (2014).

<sup>259</sup> David Hawkes, *Culture of Debt*, TIMES LITERARY SUPP. (July 11, 2017), <https://www.the-tls.co.uk/articles/private/david-hawkes-hyper-usury/> [<https://perma.cc/Z4NK-LKN4>] (reviewing ANNIE MCCLANAHAN, *DEAD PLEDGES* (2016)); Sara Zampierin, *Easy Money, Impossible Debt: How Predatory Lending Traps Alabama’s Poor*, SOUTHERN POVERTY L. CTR. (Feb. 28, 2013), <https://www.splcenter.org/20130227/easy-money-impossible-debt-how-predatory-lending-traps-alabama%E2%80%99s-poor> [<https://perma.cc/BW5Y-WX36>].

<sup>260</sup> Hawkes, *supra* note 259. See Luke Herrine, *Debtor Organizing Against Neoliberalism*, LAW & POL. ECON. (Apr. 26, 2019), <https://lpeblog.org/2019/04/26/debtor-organizing-against-neoliberalism/#more-2286> [<https://perma.cc/25ST-U3PV>] (describing the consequences of the governing of finance).

<sup>261</sup> *Id.*

<sup>262</sup> OLEN, *supra* note 256, at 221. See also Lisa A. Goodman et al., *The RCT: Integrating Rigor and Relevance to Evaluate the Outcomes of Domestic Violence Programs*, 39 AM. J. EVALUATION 58, 60 (2017).

<sup>263</sup> See Herrine, *supra* note 260.

life have “deepened pre-existing racial and gendered inequalities in the United States.”<sup>264</sup>

The legal system provides little debt-related relief to victims whose debts are family-related and were coercively incurred by the abuser. Family court orders that allocate the debt to the abuser will rarely bind the creditor.<sup>265</sup> In the context of debtor-creditor relations, debtors are required to waive their rights to seek judicial relief and submit to mandatory arbitration, a process that fails to protect their interests.<sup>266</sup> Bankruptcy protection, particularly consumer bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, increasingly has become more restrictive; the possibilities for filing *pro se* have diminished while attorney fees associated with seeking bankruptcy protection have increased.<sup>267</sup> Moreover, as Angela Littwin has pointed out, “because credit reports are simply lists of events—and credit scores are simply numeric analyses of these events—there is no evaluative process that can unlink a survivor from her former abuser.”<sup>268</sup>

Debt-related issues are often gendered. The instability that accompanies domestic violence generates its own cycle of dysfunction as day-to-day choices are complicated by financial difficulty.<sup>269</sup> Those unable to pay their debts are deemed irresponsible, and women are particularly susceptible to this stereotype. Women are said to fail to service debts due to “their nurturing and emotional nature [that] leads them to make bad financial decisions.”<sup>270</sup> They are criticized for lacking confidence, turning to the “wrong” people for advice as to how to manage their money, spending when they should be saving, and engaging in “fiscally improvident behavior.”<sup>271</sup> Indeed, socially constructed myths about personal economy suggest that anyone can get ahead if they are careful and live within their means. Disparagements fail to otherwise acknowledge the historical discrimination by the credit industry against women, poor people and people of color, and unscrupulous lenders who deploy

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<sup>264</sup> See HANNAH APPEL ET AL., INST. ON INEQ. & DEMOCRACY, THE POWER OF DEBT, IDENTITY & COLLECTIVE ACTION IN THE AGE OF FINANCE 16 (2019) <https://challengeinequality.luskin.ucla.edu/wp-content/uploads/sites/16/2019/03/Appel-Hannah-THE-POWER-OF-DEBT.pdf> [<https://perma.cc/3V9G-BLWK>].

<sup>265</sup> Littwin, *supra* note 10, at 1006.

<sup>266</sup> See Michael S. Barr, *Mandatory Arbitration in Consumer Finance and Investor Contracts*, 11 N.Y.U. J.L. & BUS. 793, 811 (2015); Jean R. Sternlight, *Creeping Mandatory Arbitration: Is It Just?*, 57 STAN. L. REV. 1631, 1649–50 (2005).

<sup>267</sup> Melissa B. Jacoby, *Bankruptcy Reform and the Financial Crisis*, 13 N.C. BANKING INST. 115 (2009) (pointing out that bankruptcy reform increased costs and decreased the effectiveness of bankruptcy relief); Lois R. Lupica, *The Consumer Bankruptcy Fee Study: Final Report*, 20 AM. BANKR. INST. L. REV. 17, 30, 34–35 (2012).

<sup>268</sup> Littwin, *supra* note 10, at 1006.

<sup>269</sup> OLEN, *supra* note 256, at 228.

<sup>270</sup> *Id.* at 11.

<sup>271</sup> *Id.* at 151, 155.

predatory lending practices while targeting these groups.<sup>272</sup> Those who fail to repay debts suffer one more form of victim-blaming along with coercive, threatening, and harassing conduct by debt collectors, especially when the debtor is black.<sup>273</sup>

To offer effective assistance to victims with financial problems and credit burdens, domestic violence programs must first consider the structural realities associated with indebtedness and the predatory nature of a poorly regulated credit industry.<sup>274</sup> The credit industry targets the underemployed and unemployed who rely on credit as a substitute for a living wage.<sup>275</sup> Women suffer disproportionately from unscrupulous lending practices.<sup>276</sup> Anti-violence advocates must challenge the corporate entities that conceal self-serving policies in the rhetoric of “corporate caring and good citizenship” as a means to distract from the larger problematic issues inherent in the personal financial industry.<sup>277</sup> It is not sufficient for programs to adopt financial literacy programs without addressing the wider threats posed by

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<sup>272</sup> See, e.g., Whitney A. Brown, *The Illegality of Sex Discrimination in Contracting*, 32 BERKELEY J. GENDER L. & JUST. 137, 176 (2017); Darrick Hamilton & William A. Darity Jr., *The Political Economy of Education, Financial Literacy, and the Racial Wealth Gap*, 99 FED. RES. BANK OF ST. LOUIS REV. 59, 62 (2017); Andrea Freeman, *Racism in the Credit Card Industry*, 95 N.C. L. REV. 1071, 1073–1074, 1119–22 (2017); Latonia Williams, *African American Homeownership and the Dream Deferred: A Disparate Impact Argument Against the Use of Credit Scores in Homeownership Insurance Underwriting*, 15 CONN. INS. L.J. 295, 319–20 (2008).

<sup>273</sup> See *supra* note 272 and accompanying text; see also APPEL ET AL., *supra* note 264, at 5 (“indebtedness is most often an isolating and shame-laden experience”); OLEN, *supra* note 256, at 35.

<sup>274</sup> See generally Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1 (2008) (describing the credit industry as unregulated although unsafe).

<sup>275</sup> SOEDERBERG, *supra* note 258, at 2, 30.

<sup>276</sup> *Id.* at 142.

<sup>277</sup> *Id.* at 145. Many of the sponsors of financial literacy curricula have been identified as predatory and subprime lenders who have needed to be bailed out themselves. See OLEN, *supra* note 256, at 202; see also CHRIS ARTHUR, FINANCIAL LITERACY EDUCATION: NEOLIBERALISM, THE CONSUMER AND THE CITIZEN 76–77 (2012) (noting that banks promote financial literacy to gain positive recognition and to access otherwise hard to reach customers). The financial industry itself is known to engage in gender disparities and senior men in the industry outnumber women by a 3:1 margin. See Laura Noonan et al., *Executives Optimistic About Improving Gender Diversity*, FINANCIAL TIMES, (Sept. 9, 2018), <https://www.ft.com/content/80200a46-b27c-11e8-8d14-6f049d06439c> [<https://perma.cc/LM9V-LE7R>]. It is ironic that revisions to the Bankruptcy Code, described as draconian and enacted to protect creditors from “bad market citizens” with disproportionately harmful effects on single mothers were introduced and promoted by Senator Joseph Biden, who has been otherwise heralded as a hero by women’s organizations for his support of the Violence Against Women Act. See SOEDERBERG, *supra* note 258, at 95, 96; *What Is a Women’s Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 HARV. WOMEN’S L.J. 19, 19–21 (2002).



“debtfarism,” which affects and transcends IPV and has served to destabilize families and society.<sup>278</sup>

## 2. *The Financial Literacy Curriculum: Austerity and Self-Help*

As described in Part I.A, financial abuse often ruins a victim’s financial wellbeing with long-lasting consequences.<sup>279</sup> A victim may face exorbitant debts not only as a result of fraud and coercion, but also as a function of a financialized economy that requires families to meet their daily needs through credit mechanisms that are often predatory and punitive.<sup>280</sup> Her economic circumstances may have resulted in a crushing accumulation of loans. Because poor and working-class people rely on credit as a means of subsistence, domestic violence advocates would do well to include remedies to indebtedness as part of the services they offer. Depending on the approach, however, agencies can mitigate economic hardship or create new ones.

### (a) *Corporate Sponsored Financial Literacy*

The majority of programs rely on corporate financial literacy education designed by corporate entities whose interests are aligned with financial markets.<sup>281</sup> Most have chosen to use the Allstate Foundation’s “Moving Ahead” curriculum for which they receive funding from the foundation in connection with the use of its training and materials.<sup>282</sup> Allstate claims to provide advocates with “a comprehensive package of tools and information designed to empower survivors to understand and manage their finances and to educate and train advocates and

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<sup>278</sup> SOEDERBERG, *supra* note 258, at 2.

<sup>279</sup> SHARP-JEFFS, *supra* note 33, at 16.

<sup>280</sup> APPEL ET AL., *supra* note 264, at 11, 15–16 (describing the acquisition of basic household necessities including utilities and municipal services through debts that may often carry usurious terms, fees and fines).

<sup>281</sup> See *supra* note 256; see also Lauren E. Willis, *Against Financial-Literacy Education*, 94 IOWA L. REV. 197, 202 (2008).

<sup>282</sup> Waldron, *supra* note 252 (noting that the Allstate Foundation has trained service providers representing more than 1,600 nonprofit organizations and has helped provide “financial literacy and asset building programs [for] domestic violence survivors in all 50 states”). See also generally *End Domestic Violence*, ALLSTATE FOUNDATION, [https://www.allstatefoundation.org/domestic\\_violence.html](https://www.allstatefoundation.org/domestic_violence.html) [https://perma.cc/PY59-BGCW] (last visited July 17, 2019). For the curriculum, see *Moving Ahead Curriculum*, ALLSTATE FOUNDATION, <https://www.purplepurse.com/tools/financial-empowerment-print.aspx> [https://perma.cc/UV9W-S5PM] (last visited July 17, 2019); see also *Resources*, ALLSTATE FOUNDATION, [https://www.allstatefoundation.org/domestic\\_violence\\_our\\_impact.html](https://www.allstatefoundation.org/domestic_violence_our_impact.html) [https://perma.cc/4662-R2DQ]. Of course, domestic violence programs do not constitute a monolithic entity; however, a review of the national and state domestic violence coalitions which receive most of the federal VAWA funding suggest that a significant number have adopted the Allstate Foundation program. See *supra* note 252 and accompanying text.

Allstate volunteers to work with domestic violence survivors as they move forward on the path to financial security.<sup>283</sup> Allstate is a private foundation of Allstate Insurance, one of the largest insurance providers in the United States, and a principal institution of profit accumulation within the global financial sector.<sup>284</sup>

In addition to Allstate's program, the National Coalition Against Domestic Violence, as well as several other state coalitions, have used a curriculum developed by the National Endowment for Financial Education ("NEFE") together with Intuit.<sup>285</sup> The NEFE promotes "financial workshop kits" and is described as having deep roots in the financial services industry.<sup>286</sup> Its financial literacy curriculum has

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<sup>283</sup> *Moving Ahead Through Financial Management Curriculum*, ALLSTATE FOUNDATION, [https://www.allstatefoundation.org/domestic\\_violence\\_impact.html](https://www.allstatefoundation.org/domestic_violence_impact.html) [<https://perma.cc/F855-JDLY>] (last visited July 17, 2019).

<sup>284</sup> See ALLSTATE FOUNDATION, <https://www.allstatefoundation.org/> [<https://perma.cc/FNU3-V687>] (last visited July 18, 2019); *Our Story*, ALLSTATE, [https://ourstory.allstate.com/?\\_ga=2.123797961.2103417960.1534903966-25884431.1534903966](https://ourstory.allstate.com/?_ga=2.123797961.2103417960.1534903966-25884431.1534903966) [<https://perma.cc/QH57-UXCZ>] (last visited July 18, 2019); *About Us*, ALLSTATE, <https://www.allstate.com/about/about.aspx> [<https://perma.cc/V5AC-7RQK>] (last visited July 22, 2019); see also Adam Hayes, *Top 10 Insurance Companies by the Metrics*, INVESTOPEDIA (Aug. 8, 2019), <https://www.investopedia.com/articles/active-trading/111314/top-10-insurance-companies-metrics.asp> [<https://perma.cc/6L9M-3EJB>] (listing Allstate as one of the top property and casualty insurers in the United States); Sebastian Kohl, *Insuring Capitalism: The Political Economy of the Private Insurance Industry*, MAX PLANCK INSTITUTE FOR THE STUDY OF SOCIETIES, [http://www.mpifg.de/forschung/projdetails\\_en.asp?ProjekteID=456](http://www.mpifg.de/forschung/projdetails_en.asp?ProjekteID=456) [<https://perma.cc/Y5A-WGU5Z>] (last visited July 18, 2019) ("The private insurance industry, and the life insurance industry in particular, is a central institution of capital accumulation within a country's financial sector.").

<sup>285</sup> See *Financial Education*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE (NCADV), <https://ncadv.org/financial-education> [<https://perma.cc/GU7E-D5DT>] (last visited July 18, 2019); *Economic Empowerment Resources*, KY. COALITION AGAINST DOMESTIC VIOLENCE, <https://kcadv.org/content/economic-empowerment-resources> [<https://perma.cc/D9UG-EF6E>] (last visited July 18, 2019); *Webinar: Rebuilding Financially After Domestic Violence*, N.J. COALITION FOR BATTERED WOMEN (Dec. 17, 2015), <http://www.njcedv.org/?s=National+Endowment+for+Financial+Education+> [<https://perma.cc/46BQ-WHXK>]; NAT'L ENDOWMENT FOR FIN. EDUC. (NEFE), <https://www.financialworkshopkits.org/Workshops/Details/ws/rebuildingfinanciallyafterdomesticviolence/> [<https://perma.cc/2SQC-56T2>] (last visited July 18, 2019). The NCADV and NEFE developed the curriculum. NAT'L ENDOWMENT FOR FIN. EDUC., HOPE AND POWER, FOR YOUR PERSONAL FINANCES (2002), [https://www.speakcdn.com/assets/2497/hope\\_and\\_power\\_english\\_version.pdf?1506375199990](https://www.speakcdn.com/assets/2497/hope_and_power_english_version.pdf?1506375199990) [<https://perma.cc/DT7L-UYV5>] [hereinafter HOPE AND POWER].

<sup>286</sup> *Financial Workshop Kits*, NAT'L ENDOWMENT FOR FIN. EDUC. (NEFE), <https://www.financialworkshopkits.org/> [<https://perma.cc/E6RJ-HYAZ>] (last visited July 18, 2019); see *National Endowment for Financial Education*, GUIDESTAR, <https://www.guidestar.org/profile/84-0632115> [<https://perma.cc/5JQC-JPZ3>] (last visited July 18, 2019).

been promoted by Citigroup, Inc.<sup>287</sup> Intuit sells products such as Turbo Tax and QuickBooks, which are designed to “power . . . financial prosperity.”<sup>288</sup>

(b) *Financial Literacy: Patronizing and Punishing*

Allstate’s curriculum includes checklists, guidance, and instructions.<sup>289</sup> It provides information on sources of income and approaches to budgets and saving. In fact, the suggestions can best be characterized as being as unrealistic as they are condescending. Allstate advises women to earn more income by working more hours or by creating “a home-based micro-business, such as selling arts and crafts.”<sup>290</sup> It suggests that women shop and overspend for emotional reasons, and offers substitutes for engaging in consumer purchases. For example, it recommends that women have a “manicure at home,” or make a “favorite dessert at home.”<sup>291</sup> Women are told they should “avoid eating out,” “limit treats,” and “find cheaper alternatives in household purchases.”<sup>292</sup> Savings on spending for children’s activities can be accomplished if victims “cook or bake together,” “read them a story,” or “play their favorite game with them.”<sup>293</sup> These suggestions contribute to the myth of the “fiscally promiscuous American” who spends on small luxuries they do not need.<sup>294</sup>

Allstate encourages weekly savings as “the best way to ensure . . . future financial success” due to “the magic in compound interest.”<sup>295</sup> Advice regarding payday lenders is tepid despite the fact that single women comprise the largest

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<sup>287</sup> See *Financial Education Curriculum*, CITI, <https://www.citigroup.com/citi/citizen/community/curriculum/adults.htm> [<https://perma.cc/5JQC-JPZ3>] (last visited July 18, 2019).

<sup>288</sup> INTUIT, <https://www.intuit.com/sandbox/homepage-cta082218/> [<https://perma.cc/N4UF-2V9Y>] (last visited July 19, 2019).

<sup>289</sup> *Allstate Foundation Purple Purse Moving Ahead Curriculum*, PURPLE PURSE ALLSTATE FOUNDATION, <https://www.purplepurse.com/resources/purplepurse/attachments/needv-allstate-module1> [<https://perma.cc/PPE6-7DGF>] (last visited July 19, 2019). The modules include *Module 1: Understanding Financial Abuse*, *Module 2: Learning Financial Fundamentals*, *Module 3: Mastering Credit Basics*, [hereinafter Allstate Part 3], *Module 4: Building Financial Foundations*, *Module 5: Creating Budget Strategies*. *Id.*

<sup>290</sup> PURPLE PURSE ALLSTATE FOUNDATION & NAT’L NETWORK TO END DOMESTIC VIOLENCE, *MODULE 2: LEARNING FINANCIAL FUNDAMENTALS 9* (2018), <https://www.purplepurse.com/resources/purplepurse/attachments/mnedv-allstate-module2.pdf> [<https://perma.cc/PPE6-7DGF>] [hereinafter ALLSTATE, MODULE 2].

<sup>291</sup> *Id.* at 10–11.

<sup>292</sup> *Id.* at 9.

<sup>293</sup> *Id.* at 11.

<sup>294</sup> OLEN, *supra* note 256, at 48–51 (describing the “latte factor” as a myth suggesting that indebted persons overspend on small regular luxuries).

<sup>295</sup> ALLSTATE, *MODULE 2*, *supra* note 290, at 12.

segment of payday debtors.<sup>296</sup> Instructions with regard to paying debts and using credit cards are often based on the preferences of the credit industry.<sup>297</sup>

The NEFE, together with the NCADV and Intuit, offers similar homilies through the toolkit, “Hope and Power.”<sup>298</sup> Their recommendations are similarly fanciful and even worse, for they offer futile remedies to address the structural issues that contribute to credit and debt problems. Victims are advised to sell their clothes at consignment shops, sell caramel apples at local events, shop at garage sales, and misinform the abuser that prices on home necessities have increased in order to pocket the difference.<sup>299</sup> Women are encouraged to “look around the house for stashes of cash” and take it “if [she doesn’t] think he’ll miss it.”<sup>300</sup> The toolkit reassures her not to “take it personally” if a landlord refuses to rent to her because she is a victim of domestic violence while failing to acknowledge that such refusal may constitute unlawful discrimination.<sup>301</sup> Other suggestions include a second job for purposes of paying bills.<sup>302</sup> Yet, the Hope and Power toolkit is silent on the matter of predatory lenders. The possibility that her debts may be unlawful due to illegal creditor practices is not addressed.<sup>303</sup>

Both curricula are pernicious for their strategies and their subterfuge. They fail to address the lived experiences of poor and working women. They practice a kind of class shaming for which the financial industry is generally well-known.<sup>304</sup> They preach a strategy of lower spending and higher frugality associated with the neoliberal politics of austerity economics—a politics that has proven unrealistic and damaging, especially to poor families.<sup>305</sup> Darrick Hamilton and William A. Darity,

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<sup>296</sup> *Id.* at 15 (advising simply that “before taking this type of loan, explore all other options”); SOEDERBERG, *supra* note 258, at 138.

<sup>297</sup> ALLSTATE FOUNDATION PURPLE PURSE & NAT’L NETWORK TO END DOMESTIC VIOLENCE, MODULE 3: MASTERING CREDIT BASICS 11 (2018), <https://www.purplepurse.com/resources/purplepurse/attachments/nnedv-allstate-module3.pdf> [<https://perma.cc/PPE6-7DGF>] (advising against closing unused credit cards because of preferred consideration of credit reporting agencies).

<sup>298</sup> See HOPE AND POWER, *supra* note 285.

<sup>299</sup> NEFE, *supra* note 285, at 23, 49–50.

<sup>300</sup> *Id.* at 23.

<sup>301</sup> *Id.* at 36; see generally Elizabeth M. Whitehorn, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII’s Sex Stereotyping Theories to the Fair Housing Act*, 101 NW. U. L. REV. 1419 (2007) (detailing the various types of unlawful sex discrimination in landlord tenant relationships).

<sup>302</sup> NEFE, *supra* note 285, at 52.

<sup>303</sup> HOPE AND POWER, *supra* note 285, at 14; NEFE, *supra* note 285, at 14.

<sup>304</sup> Matthew P. McAllister & Anna Aupperle, *Class Shaming in Post-Recession U.S. Advertising*, 41 J. COMM. COMM’N INQUIRY 140–141, 147 (2017) (noting such accusations against Allstate in advertising practices).

<sup>305</sup> See Paul Krugman, *The Austerity Delusion*, THE GUARDIAN (Apr. 29, 2015), <http://www.theguardian.com/business/ng-interactive/2015/apr/29/the-austerity-delusion> [<https://perma.cc/36FS-7NS3>]; Paul Krugman, *How the Case for Austerity Has Crumbled*, N.Y. REV. BOOKS (June 6, 2013), <http://www.nybooks.com/articles/2013/06/06/how-case->

writing about wealth disparity and indebtedness in low income and communities of color, state:

The focus of policy becomes the *rehabilitation* of the Black family. Herein lies much of the rationale for *austerity* policies: If behavioral modification, particularly with regard to personal and human capital investment, is the central issue, why fund government agencies and programs . . . ?<sup>306</sup>

Both curricula propound a type of neoliberal approach to a self-help financial management program. The inability to achieve financial stability is “a knowledge and smarts problem that could be solved on an individual basis,” without concern for structural issues.<sup>307</sup> Failure to benefit from financial literacy education is deemed a personal failure, yet another form of victim-blaming women must endure.<sup>308</sup>

Advising women to increase hours of work or seek a second job without introducing the problem of low-paying employment or identifying the organizing campaigns for a living wage is a strategy that sustains a labor economy that relies on the flexible worker whose income declines as she works harder.<sup>309</sup> Indeed, the partnership between domestic violence programs and Allstate / the NEFE mirror the partnership between McDonalds and Visa to “help” their workers live on meager fast-food wages. The McDonalds-Visa plan offers a similar “sample ‘budget journal’” described as “a laughably inaccurate view of what it’s like to budget on a

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austerity-has-crumbled/ [https://perma.cc/HB2R-MD49]; KRISNAH POINASAMY, OXFAM INTERNATIONAL, THE TRUE COST OF AUSTERITY AND INEQUALITY: UK CASE STUDY 4 (Sept. 2013), <https://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-uk-120913-en.pdf> [https://perma.cc/GAN5-ZTHY]. Similar patronizing attitudes were expressed during Congressional debates on ending Obamacare. Christopher Ingraham, *If Jason Chaffetz Wants to Compare Health Care to iPhones, Let’s Do It the Right Way*, WASH. POST (Mar. 7, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/03/07/if-jason-chaffetz-wants-to-compare-healthcare-to-iphones-lets-do-it-the-right-way/?utm\\_term=.5b7b8bc28e7e](https://www.washingtonpost.com/news/wonk/wp/2017/03/07/if-jason-chaffetz-wants-to-compare-healthcare-to-iphones-lets-do-it-the-right-way/?utm_term=.5b7b8bc28e7e) [https://perma.cc/J2YY-PENP] (quoting Rep. Jason Chaffetz (R-UT) as stating, “Americans have choices . . . And so, maybe rather than getting that new iPhone that they just love and they want to go spend hundreds of dollars on that, maybe they should invest it in their own health care.”).

<sup>306</sup> Hamilton & Darity, *supra* note 272, at 68; *see also* Willis, *supra* note 281, at 68 (describing these programs as “socially pernicious” for blaming individuals and communities for their financial plight).

<sup>307</sup> OLEN, *supra* note 256, at 22.

<sup>308</sup> *Id.* at 35; *see also* Willis, *supra* note 281, at 198 (arguing that financial literacy education blames and shame consumers for their plight).

<sup>309</sup> Kerry Rittich, *Families on the Edge: Governing Home and Work in A Globalized Economy*, 88 N.C. L. REV. 1527, 1551 (2010) (describing how the flexibilization of the labor market has increased economic risks and economic pressure); *see also* FIGHT FOR FIFTEEN, <https://fightfor15.org/> [https://perma.cc/LA9P-HKXX] (last visited July 21, 2019) (arguing for an increased national minimum wage).

minimum wage job, including obtaining a “second job.”<sup>310</sup> The toolkits are silent about the issue of pay inequity and disparities that disadvantage women and affect their ability to pay bills and save money.<sup>311</sup> Absent from either curriculum is a strategy to engage the credit industry, or address rising health care costs and reduced health care insurance payments. Also absent is, as Jacob Hacker has described, an explanation of the “great risk shift” that has largely eliminated the government or the market as a source of financial security and stability.<sup>312</sup> Such matters should be integral to any meaningful financial literacy program, to provide victims with a clearer understanding of the structural forces that define the parameters of their economic circumstances.

In fact, most studies suggest that financial literacy education has little ameliorating effect on the lives of individuals or families.<sup>313</sup> It is cost-ineffective and psychologically, if not physically, harmful as a result of the stress and blame it shifts to consumers.<sup>314</sup> It serves as a type of “doublespeak.” That is, “language used to deceive usually through concealment or misrepresentation of truth.”<sup>315</sup> Helaine Olen ponders why financial literacy education persists, notwithstanding the fact that it fails to benefit both indebted consumers and states: “[p]erhaps because the financial literacy movement is not led by Good Samaritans. On the contrary, it is led by the very people who have the most to gain by society’s continued financial ignorance: the financial services sector.”<sup>316</sup> Indeed, as one newspaper editorial has suggested:

There is a persistent myth that [financial literacy] education is the solution, that well-informed borrowers will protect themselves. But lenders almost always have more experience and information, and the gap tends to be largest for the biggest and most consequential transactions . . . A former Federal Reserve chairman, Ben Bernanke, wrote in his memoir that the 2008 crisis convinced him to abandon his view that financial consumers

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<sup>310</sup> Annie-Rose Strasser, *McDonalds Tells Workers to Budget by Getting a Second Job and Turning Off Their Heat*, THINK PROGRESS (Jul. 15, 2013), <https://thinkprogress.org/mcdonalds-tells-workers-to-budget-by-getting-a-second-job-and-turning-off-their-heat-c3bce1526c1e> [<https://perma.cc/2VUX-P7KT>].

<sup>311</sup> Crystal Martin, *Cardi B’s Tips for Making ‘Money Moves’*, N.Y. TIMES (Apr. 10, 2019), <https://nyti.ms/2VzYIxf> [<https://perma.cc/6KH5-GZSX>] (discussing pay parity as a factor in saving money and paying bills).

<sup>312</sup> JACOB S. HACKER, *THE GREAT RISK SHIFT: THE ASSAULT ON AMERICAN JOBS, FAMILIES, HEALTH CARE AND RETIREMENT AND HOW YOU CAN FIGHT BACK* 7–9 (2006).

<sup>313</sup> Willis, *supra* note 281, at 208, 260; Lauren Willis, *The Financial Education Fallacy*, 101 AM. ECON. REV. 429, 433 (2011); OLEN, *supra* note 256, at 199.

<sup>314</sup> Willis, *supra* note 281, at 260.

<sup>315</sup> Jamee K. Moudud, *Libertarian Doublespeak: Obscuring Distributional Struggles Under the Banner of “Economic Liberty,”* LAW & POL. ECON. (Apr. 23, 2018), <https://lpeblog.org/2018/04/23/libertarian-doublespeak-obscuring-distributional-struggles-under-the-banner-of-economic-liberty/#more-642> [<https://perma.cc/CY8N-P5BE>].

<sup>316</sup> OLEN, *supra* note 256, at 199.

ought to be responsible for protecting themselves. ‘Like flammable pajamas, some products should just be kept out of the marketplace.’ Mr. Bernake wrote.<sup>317</sup>

That financial literacy curricula fail to address the structural sources of indebtedness and indigence suggests a need for domestic violence programs to expand the scope of their approaches. Programs that offer “economic justice initiatives” that rely on a specious description of economic problems serve to disempower victims and distract from political and collective solutions.<sup>318</sup> These initiatives serve to adhere to an economy that has contributed to the violence it now purports to mitigate.<sup>319</sup>

#### IV. PARTNER ABUSE INTERVENTION PROGRAMS: ERASING THE ECONOMIC<sup>320</sup>

Some domestic violence scholars have recently expanded their research agendas to include a more nuanced understanding of the determinants of domestic violence. Scholarship theorizing household relationships within the context of political-economic concerns serves to underscore the correlation between economic strain and increased incidents of IPV.<sup>321</sup> Studies in the aftermath of the 2008 recession call attention to the rise of domestic violence as a result of economic

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<sup>317</sup> Editorial, *There’s Only One Way to Stop Predatory Lending*, N.Y. TIMES (May 23, 2019), <https://www.nytimes.com/2019/05/22/opinion/trump-cfpb.html> [<https://perma.cc/U6P2-SZDL>].

<sup>318</sup> ARTHUR, *supra* note 277, at 12 (critiquing financial literacy education as aiding in “delegitimizing collective risk solutions and unjustly holds individual consumers responsible for economic risks they cannot manage”).

<sup>319</sup> Nicholas J. Kiersey, *Everyday Neoliberalism and the Subjectivity of Crisis: Post-Political Control in an Era of Financial Turmoil*, 4 J. CRITICAL GLOBALISATION STUD. 23, 24 (2011) (observing how neoliberal discourses avoid discussing the role of capitalism and the crises it engenders).

<sup>320</sup> These programs are often referred to as Batterers Intervention Programs or Abuser Treatment Programs. See MASSACHUSETTS GUIDELINES AND STANDARDS FOR THE CERTIFICATION OF INTIMATE PARTNER ABUSE EDUCATION PROGRAMS 2 (2015), <https://www.mass.gov/files/documents/2016/07/si/bi-guidelines.pdf> [hereinafter MASSACHUSETTS GUIDELINES].

<sup>321</sup> See Weissman, *supra* note 12, at 415–417; Michael L. Benson et al., *Violence in Families: The Intersection of Race, Poverty, and Community Context*, IN FAM., CRIME, & CRIM. JUST., 91 (Greer Litton Fox & Michael L. Benson eds., 2000); A. Rachel Camp, *Pursuing Accountability for Perpetrators of Intimate Partner Violence: The Perils (and the Utility) of Shaming*, 98 BOSTON U. L. REV. 1677, 1718–1720 (2018); Fox & Benson, *supra* note 13, at 1–6; Daniel Schneider et al., *Intimate Partner Violence in the Great Recession*, 53 DEMOGRAPHY 471, 472 (2016) (showing that rapid increases in unemployment rates during the Great Recession were associated with increases in men’s abusive behavior).

hardship.<sup>322</sup> Telephone calls to the National Domestic Violence Hotline have increased dramatically during periods when household finances decline and financial strain increases.<sup>323</sup> The judicial system has tracked significant hikes in the number of family violence case filings due to economic downturn.<sup>324</sup> Surveys of domestic violence shelters reveal increased numbers of victims seeking help during periods of economic decline.<sup>325</sup> Staff identified financial strain as a primary cause of the increase in violence.<sup>326</sup>

Many anti-domestic violence scholars have acknowledged that eliminating male poverty is fundamental to efforts to mitigate this social problem.<sup>327</sup> Others note the conditions that provide context for addressing domestic violence, for example, the dismantling of the safety net, “trickle-down economics” with devastating consequences for the poor, and seek to persuade that a meaningful movement to end domestic violence must attend to the systems of oppression that affect those who

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<sup>322</sup> See, e.g., *The Continued Importance of the Violence Against Women Act: Hearing Before the S. Comm. on the Judiciary: Before the Comm. on the Judiciary*, 111th Cong. 405 (2009), <https://www.gpo.gov/fdsys/pkg/CHRG-111shrg56212/html/CHRG-111shrg56212.htm> [<https://perma.cc/2QQF-B3LG>] (colloquy between Senator Patrick Leahy and Catherine Pierce, Office of Violence Against Women regarding the impact of the economic crisis and unemployment on rising rates of domestic violence); *Domestic Abuse on Rise as Economy Sinks*, NBC NEWS (Apr. 10, 2009), [http://www.nbcnews.com/id/30156918/ns/health-health\\_care/t/domestic-abuse-rise-economy-sinks/#.US0txGeZHNh](http://www.nbcnews.com/id/30156918/ns/health-health_care/t/domestic-abuse-rise-economy-sinks/#.US0txGeZHNh) [<https://perma.cc/N5K9-BWMT>] [hereinafter *Domestic Abuse on Rise*]; Philip N. Cohen, *Recession Begets Family Violence*, HUFFINGTON POST (Jan. 2, 2010, 9:01 PM), [https://www.huffingtonpost.com/philip-n-cohen/recession-begets-family-v\\_b\\_409502.html](https://www.huffingtonpost.com/philip-n-cohen/recession-begets-family-v_b_409502.html) [<https://perma.cc/V592-XVLC>]; *On a Losing Streak*, ECONOMIST, Mar. 2011, at 35, 36 (describing how the foreclosure crisis contributes to increasing rates of domestic violence and family dysfunction).

<sup>323</sup> *Domestic Abuse on Rise*, *supra* note 322; see also Ian Urbina, *Philadelphia to Handle Abuse Calls Differently*, N.Y. TIMES, Dec. 31, 2009, at A13 (noting an increase in domestic violence calls due to the recession after a fifteen-year decrease); Nabenita Pal, *Cuts Threaten Civil Legal Aid*, BRENNAN CTR. FOR JUST. (Apr. 22, 2011), <https://www.brennancenter.org/analysis/cuts-threaten-civil-legal-aid> [<https://perma.cc/DL2L-WG2M>] (observing a jump in domestic violence calls during the recession).

<sup>324</sup> William Glaberson, *The Recession Begins Flooding into the Courts*, N.Y. TIMES, Dec. 28, 2009, at A1.

<sup>325</sup> See, e.g., “Mary Kay Truth about Abuse” Survey, *National Findings from Third Survey of Domestic Violence Shelters in the United States*, NAT’L CTR. ON DOMESTIC & SEXUAL VIOLENCE 2–4 (Apr. 2011), [http://www.ncdsv.org/images/marykay\\_truthabout\\_abusesurvey\\_2011.pdf](http://www.ncdsv.org/images/marykay_truthabout_abusesurvey_2011.pdf) [<https://perma.cc/FV55-MMLG>].

<sup>326</sup> *Id.*

<sup>327</sup> Jody Raphael, *Rethinking Criminal Justice Responses to Intimate Partner Violence*, 10 VIOLENCE AGAINST WOMEN 1354, 1364 (2004); Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929, 985 (1994) (recommending the study of facilitating employment for perpetrators as a means to lower recidivism rates).



harm as well as those who are harmed.<sup>328</sup> Simply stated, economic crisis and the resulting loss of employment must be addressed as a means to mitigate domestic violence. Nonetheless, addressing the economic circumstances of an abusive partner is often not considered a strategy to mitigate domestic violence.<sup>329</sup> The failure to pay attention to the economic circumstances of an abusive partner is best evidenced by a review of abuser treatment programs.<sup>330</sup>

#### A. Abuser Treatment Programs: Laws, Purpose, and Design

Abuser treatment programs were established during the 1970s and expanded rapidly during the decades that followed.<sup>331</sup> As domestic violence remedies increasingly resorted to the criminal justice system, at least forty-eight states, as well as the federal government, enacted statutes authorizing treatment programs as sentencing options.<sup>332</sup> Judges in civil cases are also statutorily authorized to order defendants to attend a treatment program as part of a domestic violence protection order.<sup>333</sup> State statutes mandate standards and guidelines and designate agencies, often housed within the criminal justice system, to approve and monitor these

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<sup>328</sup> Kirsten Faisal, *Beyond the Criminal Justice System: A White Paper of the Iowa Coalition Against Domestic Violence (ICADV)*, 36 COALITION CHRONICLES END DOMESTIC ABUSE WI. 4, 5, 8, 9 (Oct. 2017), <http://s3-us-east-2.amazonaws.com/edaw-webinars/wp-content/uploads/2019/01/07163908/Chronicles-36-2VVFOwp.pdf> [<https://perma.cc/2TBY-A3JK>] (asking for assistance for perpetrators who cannot be “thrown away or sacrificed”).

<sup>329</sup> Daniel Hatcher has suggested that poor fathers might be considered “a fellow victim of poverty’s wrath, and potential partner towards the cure.” See Hatcher, *supra* note 209, at 777.

<sup>330</sup> Abuser Treatment Programs are also called Batterers Intervention Programs. See *infra* note 331. There are a number of issues and concerns with regard to these programs. This Article limits its review to whether and how programs attend to the economic circumstances of the abuser insofar as they may contribute to acts of violence.

<sup>331</sup> See Amanda Dekki, *Punishment or Rehabilitation? The Case for State-Mandated Guidelines for Batterer Intervention Programs in Domestic Violence Cases*, 18 ST. JOHN’S J. LEGAL COMMENT. 549, 565–66 (2004); David Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, [http://www.futureswithoutviolence.org/userfiles/file/Children\\_and\\_Families/Certified%20Batterer%20Intervention%20Programs.pdf](http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Certified%20Batterer%20Intervention%20Programs.pdf) [<https://perma.cc/H6NR-5N4D>] (last visited July 18, 2019).

<sup>332</sup> Adams, *supra* note 331, at 2; see also CTR. FOR DISEASE CONTROL & PREVENTION, MENU OF STATE BATTERER INTERVENTION PROGRAM LAWS 1–2 (Jan. 29, 2015), <https://www.cdc.gov/phlp/docs/menu-batterer.pdf> [<https://perma.cc/W9BF-FUGM>] [hereinafter BATTERER INTERVENTION PROGRAM LAWS]. The Violent Crime Control and Law Enforcement Act of 1994, which included as a subsection the Violence Against Women Act of 1994, also included batterer treatment programs as a sentencing tool. Pub. L. No. 103-322, tit. IV, § 320921, 108 Stat. 1902, 2130 (codified at 18 U.S.C. § 3563(a) (2012)).

<sup>333</sup> See BATTERER INTERVENTION PROGRAM LAWS, *supra* note 332, at 2, 3, 4, 5.

programs.<sup>334</sup> Also, mainstream domestic violence coalitions are often tasked with the development of standards and program oversight.<sup>335</sup>

Abuser treatment programs were originally designed to address heterosexual male violence against female partners.<sup>336</sup> The two principal models, Emerge and the Duluth Model, were established in 1977 and 1980 respectively and have served as the prototype for national programs.<sup>337</sup> The Duluth Model is the most widely replicated program and has remained largely committed to certain tenets that include keeping the victim safe, batterer accountability, and psychoeducational methodologies to teach batterers to recognize patriarchy and male privilege as a means of stopping the violence.<sup>338</sup> The Emerge program considers domestic violence within the context of “oppression and social hierarchy” and, like the Duluth model, relies on the “symbolic battered woman” and the abuser as “a person with personal failings” as the basis for its programming.<sup>339</sup> Most programs call for forging and

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<sup>334</sup> *Id.* at 1. In order to assess abuser treatment programs including their model descriptions, criteria, and requirements, a survey was undertaken that examined every program in the fifty states. The survey used LexisAdvance for each state and filtered the results to regulations, statutes, and administrative codes that used the term “batterer.” Additional searches used the search term “batterer intervention programs” for all states. Individual program searches were also undertaken where states that did not otherwise have readily available information through LexisAdvance. Nearly every state indicated victim safety and batterer accountability as the fundamental program purposes. The survey cannot reach beyond the information on program websites and the author acknowledges that the practices of each program cannot be fully ascertained. *Batterer/Abuser/Intervention/Treatment Programs* (2018) (on file with author). Some states, such as Massachusetts and Virginia, create certification standards through boards composed of criminal justice and other service providers; others are within the province of state Attorney’s General offices. *Id.*

<sup>335</sup> See *Batterer/Abuser/Intervention/Treatment Programs*, *supra* note 334.

<sup>336</sup> Adams, *supra* note 331, at 1.

<sup>337</sup> DOMESTIC ABUSE INTERVENTION PROGRAMS: HOME OF THE DULUTH MODEL, <https://www.theduluthmodel.org/> [<https://perma.cc/NU9R-97EN>] (last visited July 21, 2019); see Carolyn B. Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention*, 120 PENN ST. L. REV. 337, 360 (2015) (surveying 46 jurisdictions to assess batterer intervention programs).

<sup>338</sup> Ramsey, *supra* note 337, at 363–64; see also KATHLEEN J. FERRARO, BATTERED WOMEN’S JUST. PROJECT, CURRENT RESEARCH ON BATTERERS INTERVENTION PROGRAMS AND IMPLICATIONS FOR POLICY 1 (2017), <https://www.bwjp.org/assets/batterer-intervention-paper-final-2018.pdf> [<https://perma.cc/4WQG-CJ6Q>]; *What Is the Duluth Model?*, DOMESTIC ABUSE INTERVENTION PROGRAMS: HOME OF THE DULUTH MODEL, <https://www.theduluthmodel.org/what-is-the-duluth-model/> [<https://perma.cc/8ALG-B57W>] (last visited July 21, 2019); *Batterer/Abuser/Intervention/Treatment Programs*, *supra* note 334.

<sup>339</sup> EMERGE, <https://www.emergedv.com> [<https://perma.cc/M2H6-N92L>] (last visited July 21, 2019); *Goals for Program Members*, EMERGE, <https://www.emergedv.com/goals-for-group-members.html> [<https://perma.cc/3TF2-2KAP>] (last visited July 21, 2019) (focusing on accountability goals); Faisal, *supra* note 328, at 5. Some states are

maintaining relationships, primarily with criminal justice system actors including police, prosecutors, prisons, and probation.<sup>340</sup>

In nearly all programs, the abuser pays fees associated with the program, including the costs of assessment, orientation fees, and per-class costs that range from \$370 to \$1,000.<sup>341</sup> Fees may be assessed at a sliding scale, but programs have decreed that, as a matter of accountability, some payment must be made notwithstanding a participant's indigence.<sup>342</sup> Moreover, programs do not allow the abuser to seek insurance coverage for program costs, even if available.<sup>343</sup> A number of programs seek to impose jail time on participants who fail to attend or otherwise do not complete the program, which may include failure to pay program fees.<sup>344</sup>

Some programs acknowledge unemployment to be a demographic risk factor in domestic violence and include intake questions that seek information regarding an abuser's employment history.<sup>345</sup> One program categorizes abusers with

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experimenting with new models, for example the state of Iowa has begun to pilot a program called Achieving Change Through Values-Based Behavior based on acceptance and mindfulness. *See also* Sarah Boden, *Iowa Tries a New Domestic Violence Intervention: Mindfulness*, NPR (Oct. 21, 2017), <https://www.npr.org/2017/10/21/558623534/iowa-tries-a-new-domestic-violence-intervention-mindfulness> [<https://perma.cc/ZY7N-8GNP>].

<sup>340</sup> *What Is the Duluth Model?*, *supra* note 338.

<sup>341</sup> The actual costs may be higher as they are just estimates based on the programs that disclose their fees. *Batterer/Abuser/Intervention/Treatment Programs*, *supra* note 334. For example, Arkansas charges \$370 for the 52-hour program, while Georgia's classes can cost as much as \$720. *Arizona Domestic Violence Classes Online*, DV CLASS, <https://www.dvclass.com/Domestic-Violence-Classes/Arizona.aspx> [<https://perma.cc/G6ZB-CFYG>] (last visited July 18, 2019).

<sup>342</sup> For example, Massachusetts and Oregon require community service if a participant is indigent and cannot pay fees. *Batterer/Abuser/Intervention/Treatment Programs*, *supra* note 334.

<sup>343</sup> *Id.* Examples of this occur in Nebraska, North Carolina (abuse is not a mental condition but a "behavioral choice"), and Utah.

<sup>344</sup> *Id.* (listing Alaska, Arkansas, some California programs, Colorado, Georgia, Hawaii, Illinois, Kentucky, and Virginia).

<sup>345</sup> *Id.* (listing Rhode Island, Tennessee, Virginia, Washington, and Wisconsin); *see also* Ct. Criminal Justice Advisory Commission, *Ct. Domestic Violence Offender Program Standards*, STATE OF CONN. JUDICIAL BRANCH (Sept. 25, 2014), <https://www.jud.ct.gov/faq/DVOffenderProgramStandards.pdf> [<https://perma.cc/BA8G-HDA4>]; COLO. DOMESTIC VIOLENCE OFFENDER MANAGEMENT BOARD, COLO. DIVISION OF CRIM. JUST., *COLORADO STANDARDS FOR TREATMENT WITH COURT ORDERED DOMESTIC VIOLENCE OFFENDERS 165* (2008), <http://cdpsdocs.state.co.us/dvomb/Standards/standards.pdf> [<https://perma.cc/QMA9-X3TS>] [hereinafter *COLORADO STANDARDS*] (noting that those with employment are more likely to successfully complete the program); Jesse Hansen, *Standards for Treatment with Court-Ordered Domestic Violence Offenders: A Process Evaluation*, COLO. DIVISION OF CRIM. JUST. (May 2016), <https://cdpsdocs.state.co.us/dvomb/Research/Evaluation.pdf> [<https://perma.cc/R5J9-DS5Y>] (comparing femicide perpetrators with other abusive men, and finding that unemployment was the most important demographic risk factor for acts of intimate partner femicide); *What*

troublesome employment histories as in need of “high intensity” intervention.<sup>346</sup> Yet only two programs appear to address joblessness as a condition relevant to the mitigation of abuse.<sup>347</sup> Unemployment is addressed as an individualized criminogenic factor without reference to the structural obstacles that prevent individuals from engaging in the workplace.<sup>348</sup> A Department of Justice-funded study examining educational topics thought to be relevant by program staff reveals that joblessness and economic inequality were not ranked.<sup>349</sup> The Center for Disease Control’s compilation of batterer treatment program laws similarly fails to address employment-related assistance, financial difficulties, and credit and indebtedness concerns.<sup>350</sup> Indeed, programs that assign “high intensity” intervention to individuals because of a troubled employment history do not address job skills, the condition of the labor market, or job training.<sup>351</sup> Instead, they may require an abuser to obtain employment as a condition of compliance, whereupon staff are required to monitor employment status and report failures to obtain employment to criminal justice actors.<sup>352</sup>

### *B. Abuser Treatment Programs: Eliding the Economic*

Abuser treatment program curricula are not static. Indeed, over the past decades, standards have adapted to address language needs, as well as partner abuse committed by women against men and between LGBTQ couples.<sup>353</sup> Yet, the

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*Is the Duluth Model?*, *supra* note 338 (lacking reference to economic circumstances of the perpetrator); *see also* Ramsey, *supra* note 337, at 378–412 (noting that Ohio was the only exception where a program identified poverty and unemployment as factors to be considered).

<sup>346</sup> *See, e.g.*, COLORADO STANDARDS, *supra* note 345, at 35.

<sup>347</sup> *See* OHIO DOMESTIC VIOLENCE NETWORK, OHIO STANDARDS FOR BATTERERS INTERVENTION 12 (Aug. 2010), [http://www.odvn.org/Resource%20Center/BI\\_Standards\\_2010\\_Final3\\_Ohio.pdf](http://www.odvn.org/Resource%20Center/BI_Standards_2010_Final3_Ohio.pdf) [<https://perma.cc/LF7U-ZANY>] (noting that the Appalachian region faces particular challenges, including poverty and unemployment and requiring state programs to “be aware how these factors may affect victim safety”). Massachusetts standards reference referrals to other agencies, including those that might assist with employment training, with the caveat that such training is supplemental to abuser treatment. *See* MASSACHUSETTS GUIDELINES, *supra* note 320, at 2.

<sup>348</sup> COLORADO STANDARDS, *supra* note 345, at 110, 133.

<sup>349</sup> *See* DAG MACLEOD ET AL., NAT’L CRIM. JUST. REFERENCE SERVICE, BATTERER INTERVENTION SYSTEMS IN CALIFORNIA: AN EVALUATION 37–47 (June 2010), <https://www.ncjrs.gov/pdffiles1/nij/grants/230702.pdf> [<https://perma.cc/7FJ6-YAMJ>].

<sup>350</sup> *See* STATE BATTERER INTERVENTION PROGRAM LAWS, *supra* note 332.

<sup>351</sup> *Id.* at 35, 42, 134.

<sup>352</sup> *Id.* at 42, 134 (describing monitoring with probation officers).

<sup>353</sup> *Batterer/Abuser/Intervention/Treatment Programs*, *supra* note 334 (giving an example that Connecticut, Massachusetts, Ohio, and Rhode Island require language accessibility, and that Alaska, Delaware, Georgia, Indiana, Michigan, New Jersey, Ohio,

dominant paradigm continues to emphasize patriarchy in opposite-sex relationships to the near exclusion of other systems of oppression. As Professor Rachel Camp has noted with regard to these programs:

their lack of success arises from a failure to prioritize internal accountability . . . [O]nly three jurisdictions list the therapeutic rehabilitation of the offender as a goal. In light of this and of the limited success rates of DVIPs generally, external accountability (through retribution) appears to be the accountability goal prioritized for this most prevalent treatment intervention.<sup>354</sup>

Camp also observes that “[b]eyond critiques of the effectiveness of the content of the curriculum, DVIPs [Domestic Violence Intervention Programs] have been criticized for how they essentialize and shame perpetrators.”<sup>355</sup>

The failure of abuser treatment programs to address larger political-economic concerns, including economic strain and employment-related problems, may reflect legal requirements associated with program certification requirements well as an ideological blind spot about the dimensions of domestic violence.<sup>356</sup> As noted above, program standards are often restricted by state regulations, enforced by criminal justice agencies, and implemented by mainstream domestic violence groups.<sup>357</sup> Indeed, accountability, not rehabilitation, is the stated goal of nearly all programs.<sup>358</sup> Individual behavioral disorders, including substance abuse, mental health, and communication deficits, are considered incidental to the dynamic of domestic violence—viewed principally as a condition of patriarchy and male privilege—to be treated separately.<sup>359</sup>

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Oklahoma, Texas, and West Virginia have programs for women abusers although they tend to be shorter than those for men); *see also* Ramsey, *supra* note 337, 378–412.

<sup>354</sup> Camp, *supra* note 321, at 1713 (internal quotations omitted).

<sup>355</sup> *Id.*

<sup>356</sup> *See* PATRICIA CLUSS & ALINA BODEA, THE EFFECTIVENESS OF BATTERER INTERVENTION PROGRAMS 15–16 (Mar. 2011), <http://fisafoundation.org/wp-content/uploads/2011/10/BIPsEffectiveness.pdf> [<https://perma.cc/BA5S-6M72>].

<sup>357</sup> *See Batterer/Abuser/Intervention/Treatment Programs*, *supra* note 334 and accompanying text (noting the program standards or “best practices” in the states of Arkansas, Delaware, Maine, Indiana, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Tennessee, Wisconsin are developed or monitored or otherwise guided by domestic violence programs); *see also* Briana Barocas et al., *Changing the Domestic Violence Narrative: Aligning Definitions and Standards*, 31 J. FAM. VIOL. 941, 942–943, (2016).

<sup>358</sup> Ramsey, *supra* note 337, at 376 (noting that only 3 out of 46 jurisdictions listed offender rehabilitation as a goal).

<sup>359</sup> *Batterer/Abuser/Intervention/Treatment Programs*, *supra* note 334 (giving as an example that Georgia, Kentucky, Maryland, Massachusetts, Missouri, Ohio, Oregon, Rhode Island, Tennessee, Utah, Washington—are all indicating the need to treat, for example, substance as an unrelated matter); *see also* Ramsey, *supra* note 337, at 378 (noting that

Program standards may be unduly retributive for abusers who have suffered financial hardships and lack the means to pay fees. Notwithstanding guidelines that promulgate sliding scale fees, studies demonstrate that fees are problematic and frequently resulted in the participant's inability to comply.<sup>360</sup> Public defender attorneys have indicated that their indigent clients "were often not told of sliding-scale fees, could not add community service onto their already strapped schedules, and were often presented with a choice between paying for groceries or paying for the program."<sup>361</sup> As noted above, failure to pay fees may result in a determination that a participant failed to comply with program requirements, and thus he is subjected to additional court sanctions. Yet, studies demonstrate that assessments as to a defendant's ability to pay are fraught with problems.<sup>362</sup> These determinations are often abbreviated and made in courts without records, where defendants are without legal counsel.<sup>363</sup> In some instances, a hearing may not be held at all.<sup>364</sup>

Notwithstanding studies that point to the importance of alleviating economic stress as a way to mitigate domestic violence, most programs ignore the obstacle abusers may face in efforts at gainful employment.<sup>365</sup> Programs professing to ameliorate economic abuse suffered by victims are unlikely to succeed without acknowledging that the abuser himself may be a victim of pernicious economic forces, including predatory lending, credit discrimination, and other unlawful credit practices.<sup>366</sup>

It would be unduly facile to posit that domestic violence is wholly attributable to the economic dislocation experienced by perpetrators. To privilege patriarchy as the dominant paradigm with which to address domestic violence, however, implies the need to recognize the cultural environment and economic circumstances to

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individuals with mental health or substance abuse may be banned from the program, referred out, but are not treated for such problems as part of the abuser treatment program).

<sup>360</sup> SUSIE MASON DOSIK, ALASKA JUDICIAL COUNCIL, BATTERER INTERVENTION PROGRAMS: STAKEHOLDER OBSERVATIONS 7 (Aug. 2011) (recognizing the difficulties posed by fees); see also MACLEOD ET AL., *supra* note 349, at 110–11.

<sup>361</sup> DOSIK, *supra* note 360, at 13.

<sup>362</sup> Christopher D. Hampson, *The New American Debtors' Prisons*, 44 AM. J. CRIM. L. 1, 10 (2016) (noting that "many courts fail to hold these hearings—or, if they do, they may last only as long as two minutes"); see also NAGRECHA ET AL., *supra* note 197.

<sup>363</sup> Hampson, *supra* note 362, at 10.

<sup>364</sup> *Id.*; see also ACLU OF TEXAS, NO EXIT, TEXAS: MODERN-DAY DEBTORS' PRISONS AND THE POVERTY TRAP 5–7 (Nov. 2016), [https://www.aclutx.org/sites/default/files/field\\_documents/debtorsprisonfinal\\_0.pdf](https://www.aclutx.org/sites/default/files/field_documents/debtorsprisonfinal_0.pdf) [<https://perma.cc/VR37-BJBK>].

<sup>365</sup> Angela Cai, *Insuring Children Against Parental Incarceration Risk*, 26 YALE J.L. & FEMINISM 91, 121 (2014) (describing the job challenges facing economically disadvantaged parents who have committed criminal acts); see also *Youths, Blacks, Hispanics Most Likely to Be Working Poor*, BUREAU OF LAB. STAT. (Apr. 16, 2002), <https://www.bls.gov/opub/ted/2002/apr/wk3/art02.htm> [<https://perma.cc/KKK7-TPNV>].

<sup>366</sup> Hatcher, *supra* note 209, at 775–76 (critiquing policies that treat men "as an enemy to be pursued rather than a fellow victim of poverty's wrath, and potential partner towards the cure"); see also Littwin, *Escaping Battered Credit*, *supra* note 52, at 419.

which male privilege is subject. There is a sociology of patriarchy which functions within and is acted upon by an ever-changing political economy. The absence of a social justice framework beyond patriarchy limits efforts to address the determinants of this social problem. As one researcher has observed:

the psychological and behavioural emphases of the discourse tend to depoliticise discussion of these connections, confining attention to the gender questions of what it means to be a (non-violent) man, neglecting the political questions of what it means for men (and women) to create a less violent and more just world.<sup>367</sup>

As a result of the failure to include the political-economic framework of domestic violence, current abuser treatment programs are inadequately equipped to succeed with the tasks at hand.<sup>368</sup> Without attending to socioeconomic inequality, the risk of individuals engaging in abusive behavior, often as the very result of such inequality, will not be sufficiently minimized.<sup>369</sup>

#### V. EMERGING MODELS: THE POLITICAL ECONOMY OF ADVOCACY STRATEGIES

There is a growing interest within the anti-domestic violence movement to address economic issues through the development of new programmatic approaches and interventions. Important alternative models have emerged designed to ameliorate economic abuse while challenging the ideology of unfettered markets.<sup>370</sup> At the same time, debates about abuser treatment programs' effectiveness have intensified.<sup>371</sup> Frustration born of research findings that suggest current models have failed to improve outcomes has encouraged a discourse about such programs and has served to create an opening for consideration of a greater focus on social justice interventions.<sup>372</sup> A review of these programmatic efforts, discussed below, suggests

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<sup>367</sup> Alan Greig, *Political Connections: Men, Gender, and Violence 2* (United Nations International Research and Training Institute for the Advancement of Women, Working Paper No. 1, 2001), [http://menengage.org/wp-content/uploads/2014/06/Political\\_Connections\\_-\\_Men\\_Gender\\_and\\_Violence.pdf](http://menengage.org/wp-content/uploads/2014/06/Political_Connections_-_Men_Gender_and_Violence.pdf) [<https://perma.cc/5FRB-UM7T>].

<sup>368</sup> See CLUSS & BODEA, *supra* note 356, at 10, 15 (showing that the more rigorous the study, the less encouraging the findings); Julia C. Babcock et al., *Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, 23 CLINICAL PSYCHOL. REV. 1023, 1028–30 (2004) (noting that treatment programs have only a small effect).

<sup>369</sup> KEITH PAYNE, *THE BROKEN LADDER: HOW INEQUALITY AFFECTS THE WAY WE THINK, LIVE, AND DIE* 76 (2017).

<sup>370</sup> See discussion *infra* Sections V.A., V.B.

<sup>371</sup> EDWARD W. GONDOLF, *GENDER-BASED PERSPECTIVES ON BATTERER PROGRAMS: PROGRAM LEADERS ON HISTORY, APPROACH, RESEARCH, AND DEVELOPMENT, INTRODUCTION- RESPECT, ACCOUNTABILITY, AND JUSTICE* xi (2015).

<sup>372</sup> *Id.*

opportunities to develop solutions within the interconnectedness of the political economy and domestic violence.

*A. The Center for Survivor Agency and Justice*

The Center for Survivor Agency and Justice (“CSAJ”) is a national organization established in 2011 focused on the relationship between poverty and domestic violence and the remediation of economic abuse.<sup>373</sup> The organization describes its work as “foster[ing] systemic change that better aligns what communities provide with what works to meet the comprehensive, self-defined needs of IPV survivors.”<sup>374</sup>

CSAJ recognizes the need to challenge inequitable laws as a means of structural reforms on behalf of domestic violence victims and to address inequality and poverty more generally.<sup>375</sup> To that end, CSAJ enacts a law and political economy approach to civil litigation to prohibit predatory and other wrongful debt collection practices, credit and housing discrimination matters, as well as federal tax advocacy.<sup>376</sup> Relying on protective federal and state consumer laws, including the Truth in Lending Act, the Military Lending Act, state unfair and deceptive trade practices statutes, and licensing laws, CSAJ seeks to redistribute the burdens of the current financial industry.<sup>377</sup> In the realm of family law litigation, CSAJ also includes an analysis of the institutional power bearing on economic abuse.<sup>378</sup> CSAJ staff have developed the expertise to assess the financial consequences when a survivor must choose between public assistance and family law-related economic relief.<sup>379</sup>

In the realm of economic justice initiatives and advocacy, CSAJ distinguishes itself from other programs that address survivor “deficits” rather than confronting

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<sup>373</sup> See CTR. FOR SURVIVOR AGENCY & JUST., <https://csaj.org> [<https://perma.cc/6E3N-ACU6>] (last visited July 18, 2019).

<sup>374</sup> *Our Work*, CTR. FOR SURVIVOR AGENCY & JUST., <https://csaj.org/work/> [<https://perma.cc/8KL5-HMR6>] (last visited July 18, 2019). It “envisions a world where all people have equal access to physical safety, economic security, and human dignity.” *Vision*, CTR. FOR SURVIVOR AGENCY & JUST., <https://csaj.org/mission/#vision> [<https://perma.cc/YL9F-2ABQ>] (last visited July 18, 2019).

<sup>375</sup> ERICA A. SUSSMAN & SARA WEE, CTR. FOR SURVIVOR AGENCY & JUST., ACCOUNTING FOR SURVIVORS’ ECONOMIC SECURITY: AN ATLAS FOR DIRECT SERVICE PROVIDERS 51 (2017), [https://csaj.org/document-library/CSAJ\\_Atlas\\_Mapbook\\_1\\_FINAL\\_TO\\_POST.pdf](https://csaj.org/document-library/CSAJ_Atlas_Mapbook_1_FINAL_TO_POST.pdf) [<https://perma.cc/23R6-YS2S>].

<sup>376</sup> See *Our Work*, *supra* note 374.

<sup>377</sup> CTR. FOR SURVIVOR AGENCY & JUST., GUIDEBOOK ON CONSUMER AND ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS: A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES 40–41, 43–44, 129 (2017), [https://csaj.org/document-library/CSAJ\\_Guidebook\\_COMPLETEE.pdf](https://csaj.org/document-library/CSAJ_Guidebook_COMPLETEE.pdf) [<https://perma.cc/A2TQ-Y75U>].

<sup>378</sup> *Id.*

<sup>379</sup> *Id.* at 179 (arguing that “the decision to pursue economic relief [per family law remedies] must be grounded in the survivor’s own risk assessment”).



the social structures that obstruct economic well-being and security.<sup>380</sup> For example, its approach to restoring a victim's credit worthiness prioritizes payment of debts based on her needs as opposed to the interests of credit industries.<sup>381</sup> CSAJ staff produce comprehensive training materials on broad topics related to consumer and civil economic rights and protections.<sup>382</sup> They promote litigating predatory lending practices and other institutionalized unfair debt practices that burden victims. Just as importantly, CSAJ challenges the "institutional ideology" of domestic violence programs; its staff is committed to strategies of collaboration, intentional about coalition building, and dedicated to "learn[ing] from and build[ing] partnerships across disciplines."<sup>383</sup> The organization collaborates with individuals and social justice agencies in order to address multiple issues, including race and ethnicity, consumer rights, housing and foreclosure defense, and urban poverty.<sup>384</sup> It identifies the need for advocates to create "a *partnership* between the DV, anti-poverty, and anti-racist fields that attends to the ways in which physical and economic risks facing survivors fundamentally shape their opportunities for securing safety."<sup>385</sup> Success is measured by the outcome of organizational strategies upon both the survivor *and* the community.<sup>386</sup> By working among diverse constituencies and across different disciplines, CSAJ provides political alternatives to address the economic consequences of IPV.

#### *B. Emerging Political-Economic Perspectives for Partner Abuse Treatment Programs*

Also worthy of emulation is the Alma Center in Milwaukee, Wisconsin, a center which works with men with a history of domestic violence and which serves as a model program to address the political-economic determinants of such violence.<sup>387</sup> The Center partners with workforce and small business development

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<sup>380</sup> See SUSSMAN & WEE, *supra* note 375.

<sup>381</sup> See CTR. FOR SURVIVOR AGENCY & JUST., *supra* note 377, at 58.

<sup>382</sup> *Id.*

<sup>383</sup> *Id.* at 14.

<sup>384</sup> *Project Partners*, CTR. FOR SURVIVOR AGENCY & JUST., <https://csaj.org/about/#project-partners> [<https://perma.cc/5CBS-Q9M2>] (last visited July 18, 2019).

<sup>385</sup> KATIE VONDELINDE ET AL., CTR. FOR SURVIVOR AGENCY & JUST., A GUIDE TO CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS: AN INTRODUCTION 29 (Apr. 26, 2018), [https://csaj.org/document-library/CSAJ\\_Consumer\\_Issue\\_Spotting\\_HANDOUT.pdf](https://csaj.org/document-library/CSAJ_Consumer_Issue_Spotting_HANDOUT.pdf) [<https://perma.cc/E2RX-4KG2>].

<sup>386</sup> See, e.g., CTR. FOR SURVIVOR AGENCY & JUST., CONSUMER RIGHT TRAINING TOOLKIT: STRATEGIC ACTION PLANNING WORKSHEET, <https://drive.google.com/file/d/1UVkdzFWZ44Br1zv5bkAntyN5DyfPHIMt/view> [<https://perma.cc/W5MU-LNBQ>] (last visited July 18, 2019).

<sup>387</sup> Michael Jahr, *Breaking the Cycle*, in UNLOCKING POTENTIAL, WISC. POL'Y RES. INST. 26 (2016), <https://www.badgerinstitute.org/BI-Files/Special-Reports/Reports->

programs to assist perpetrators in obtaining employment.<sup>388</sup> These employment-related services anticipate that perpetrators will have setbacks that might hinder work-related success and compliance issues and thus build in programmatic support in lieu of termination and punishment.<sup>389</sup> In addition, the San Francisco Local Child Support Enforcement Agency, although not exactly an abuser treatment program, provides educational and employment-related training to fathers identified as perpetrators of domestic violence.<sup>390</sup>

New studies have recognized the importance of economic resources and employment assistance to batterers in order to improve outcomes in abusers.<sup>391</sup> The failure to address these matters has been described as the “most ardently discussed missed prevention opportunity.”<sup>392</sup> Given the heightened debate about the efficacy of abuser treatment programs and concerns that no existing model has reduced IPV, some program staff have called for the development of new “principles of respect, accountability, and social justice—principles that often get overlooked in the prevalent re-conception of programming as merely service delivery or psychological treatment.”<sup>393</sup> Although studies document resistance to change, interviews with abuser treatment program directors and staff revealed their interest in a “commitment to social justice and social change” and their recognition of the benefits of addressing multiple oppressions as strategies to reduce gender violence.<sup>394</sup> As evidence of promising developments, more recently, abuser treatment programs have called for programmatic shifts to revise the curriculum to include race, class, and other intersectional oppressions.<sup>395</sup>

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Documents/Unlocking\_Potential\_2016.pdf [https://perma.cc/VV8N-F6NU] (focusing on abuser trauma as well as their abusive childhood experiences).

<sup>388</sup> *Id.* at 28.

<sup>389</sup> Michael Jahr, *Removing Barriers to Employment*, in UNLOCKING POTENTIAL, WISC. POL’Y RES. INST. 32 (2016), [https://www.badgerinstitute.org/BI-Files/Special-Reports/Reports-Documents/Unlocking\\_Potential\\_2016.pdf](https://www.badgerinstitute.org/BI-Files/Special-Reports/Reports-Documents/Unlocking_Potential_2016.pdf) [https://perma.cc/VV8N-F6NU] (quoting one program participant: “Other people, they help you find a job and then let you go.” But the MJW staff works with you “no matter what.”).

<sup>390</sup> See OFF. OF CHILD SUPPORT ENFORCEMENT, U.S. DEP’T HEALTH & HUMAN SERV., NO. 7, PROMOTING CHILD WELL-BEING & FAMILY SELF-SUFFICIENCY 2, [https://www.acf.hhs.gov/sites/default/files/ocse/family\\_violence\\_collaboration.pdf](https://www.acf.hhs.gov/sites/default/files/ocse/family_violence_collaboration.pdf) [https://perma.cc/6QM6-PEYU].

<sup>391</sup> Courtenay Silvergleid Wallpe, *Engaging a Systems Approach to Evaluate Domestic Violence Intervention with Abusive Men: Reassessing the Role of Community*, PORTLAND ST. U. DISSERTATIONS & THESES 349 (2010).

<sup>392</sup> *Id.*

<sup>393</sup> GONDOLF, *supra* note 371, at xi.

<sup>394</sup> *Id.* at vi, xvii, vii, 19 (noting interviewee commentary).

<sup>395</sup> *Id.* at 26.

## VI. CONCLUSION

An understanding of the ways that domestic violence impairs the economic citizenship of victims implies the need to interrogate the ways that political-economic arrangements affect the usefulness of the law and advocacy initiatives, neither of which operate outside of a political-economic context. The challenges of using law and advocacy strategies as a remedy to gender violence are formidable, given that “neoliberal rationality disseminates the *model of the market* to all domains and activities – even where money is not at issue – and configures human beings exhaustively as market actors, always, only, and everywhere as *homo economicus*.”<sup>396</sup> Efforts to address domestic violence—shaped by economic uncertainty and inequality—require new forms of advocacy to embrace a vision for socioeconomic rights and to reject reliance on market-oriented “solutions” that, in the end, are not solutions at all. As Professor Samuel Moyn has written in the context of human rights work, “advocates can work to extricate themselves from their neoliberal companionship.”<sup>397</sup>

The work of CSAJ offers promising relief for individuals and communities when such interventions are focused on structural inequalities and the intersecting experiences of gender violence and poverty.<sup>398</sup> Relatedly, scholars in collaboration with the Institute on Inequality and Democracy have suggested that the term “debtor” implies a political identity around which collective organizing has and can be accomplished to discharge mass indebtedness and reject “illegitimate debts.”<sup>399</sup> Anti-domestic violence initiatives should embrace these efforts and endeavor to create a “moral economy” to address economic inequality as central to their IPV agenda.<sup>400</sup> Domestic violence programs may brand their efforts to address the economic consequences of IPV as “economic justice initiatives,” but they offer little justice when programmatic efforts are tied to a political-economic system that exacerbates systemic poverty, and thus IPV.

Similarly, innovative programming offered by the Alma Center facilitates intervention with abusive partners whose behaviors are shaped by and enacted within the political-economic realities of their day-to-day lives.<sup>401</sup> Scholars who have studied intervention strategies with low-income noncustodial fathers with unstable employment work have identified criteria for intervention and promote a

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<sup>396</sup> WENDY BROWN, UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION 31 (2015).

<sup>397</sup> SAMUEL MOYN, NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD 11 (2018).

<sup>398</sup> See *supra* Section IV.A.

<sup>399</sup> APPEL ET AL., *supra* note 264, at 35, 39, 45–50 (while acknowledging limits, describing successful grassroots campaigns both in and outside of the United States to target the problem of indebtedness as a failure of government and financial markets).

<sup>400</sup> See Hawkes, *supra* note 259.

<sup>401</sup> See discussion *supra* Section V.B.

“dignity litmus test,” which includes the provision of economic resources.<sup>402</sup> Meaningful intervention is unlikely without addressing poverty and social inequality in order to “dismantle what produces and perpetuates domestic violence.”<sup>403</sup>

Advocates would do well to acknowledge the relationship between economic and legal matters and seek to “reallocate[ ] rights to advance general human needs.”<sup>404</sup> Law reform for the purpose of addressing domestic violence must avoid reprivatizing IPV and encourage public structural remedies to address private dilemmas. Market-centric reforms promise little amelioration to the harms suffered by victims. Effective remedies to gender violence and its consequences require a critical perspective of the political-economic forces that shape the behavior of perpetrators and that disempower victims.

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<sup>402</sup> Kathryn Edin, *Child Support in the Age of Complex Families*, 34 ISSUES OF SCI. & TECH. (2018), <https://issues.org/child-support-in-the-age-of-complex-families/> [https://perma.cc/S9LX-GVMF].

<sup>403</sup> See SUSSMAN & WEE, *supra* note 375, at 33.

<sup>404</sup> Martha McCluskey, *Economic Human Rights, Not Tough Policy Tradeoffs*, LAW & POL. ECON. (Apr. 5, 2018), <https://lpeblog.org/2018/04/05/economic-human-rights-not-tough-policy-tradeoffs/> [https://perma.cc/37V7-2VTX].