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## Panel on Problematizing Assumptions About Gender Violence (Transcript)

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## TRANSCRIPT<sup>°</sup>

### CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

## Panel on Problematizing Assumptions About Gender Violence

UNIVERSITY OF MIAMI SCHOOL OF LAW

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**MACDOWELL:** As Beth Richie described in her keynote address, we are here to reimagine a movement to end gender violence, and that goal creates space for a feminist analysis that is at once broader and more particularized than the initial feminist analysis of the problem.<sup>1</sup> So, for example, our analysis can be broader in that we consider the experiences

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<sup>°</sup> This transcript has been edited from its original transcription for clarity.

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<sup>†</sup> Original remarks from the CONVERGE! conference omitted.

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<sup>1</sup> Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257 (2015).

of men as well as women—and, I will argue, perpetrators as well as victims. But what do I mean by more particularized? I mean that we can consider both parties to a domestic violence case in detail, and in relationship to the social stereotypes and norms that adhere to both victims and perpetrators.

The article that I am discussing today, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*,<sup>2</sup> was inspired by my experiences representing victims of domestic violence in family court, and is part of my effort to try to reconcile inconsistent outcomes in those cases. As an example of that phenomenon, I discuss two child custody and visitation cases with similar facts tried before the same judge. Both involve couples with relatively long histories of domestic violence. The last domestic violence incident in both cases had happened after a period of separation, occurred in public, and resulted in substantial physical injuries to the victims. Both cases had also been preceded by a criminal case where the perpetrator had been found guilty of misdemeanor domestic violence charges. Thus, in both cases there had already been a determination that domestic violence had occurred, what had happened, and who had committed the violence. Moreover, under applicable state law, the victims met the criteria for a number of different kinds of relief, including the issuance of a civil restraining order that could protect the children as well as the victim. There was also a statutory rebuttable presumption that sole custody should go to the victims. Additionally, both victims were seeking supervised visitation with the children for the defendant, and there was a statutory requirement that the judge consider the safety of the children in making her custody decisions, and a strong presumption that supervised visitation was appropriate.

Even with these laws, these orders can nonetheless be very difficult to get, as many of you are aware. But one of the victims in these cases, who I call Sandra, did get supervised visitation, as well as sole custody. The other, who I call Madeline, got custody but was denied supervised visitation. Moreover, unlike Sandra, Madeline was treated as blame worthy by the judge, who ordered her to attend parenting classes along with her children's father. As Madeline said afterwards, "The judge knew I was beat and did not care. I was less than zero." How can we understand these different outcomes?

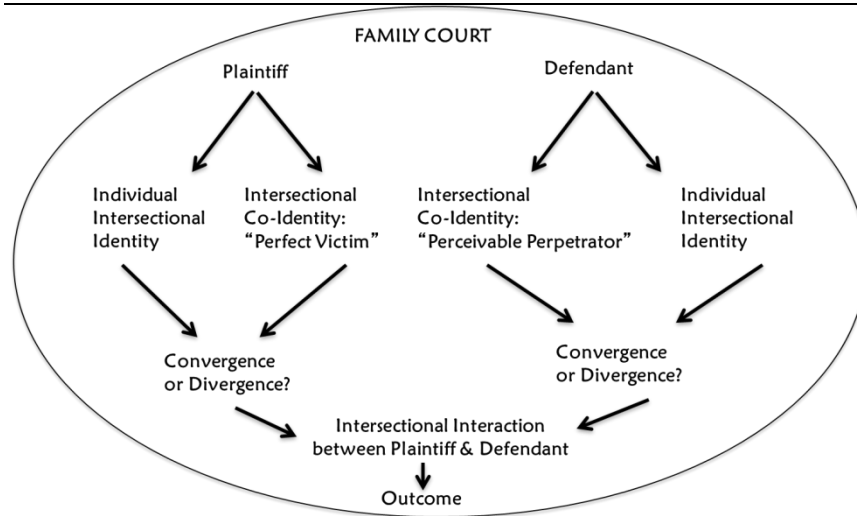
Critical feminist theories like intersectionality help us to understand why some women may be recognized as victims more readily than others because of the ways that dominate social norms about victims interact

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<sup>2</sup> Elizabeth L. MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. GENDER RACE & JUST. 531 (2013).

with race and gender stereotypes. In particular, scholars like Adele Morrison and Leigh Goodmark have shown how domestic violence law and policy is informed by an ideal of the perfect victim: a female who is white, middle class, heterosexual, and passive.<sup>3</sup> Women who diverge from that norm are less likely to be recognized as victims.

### Slide 1

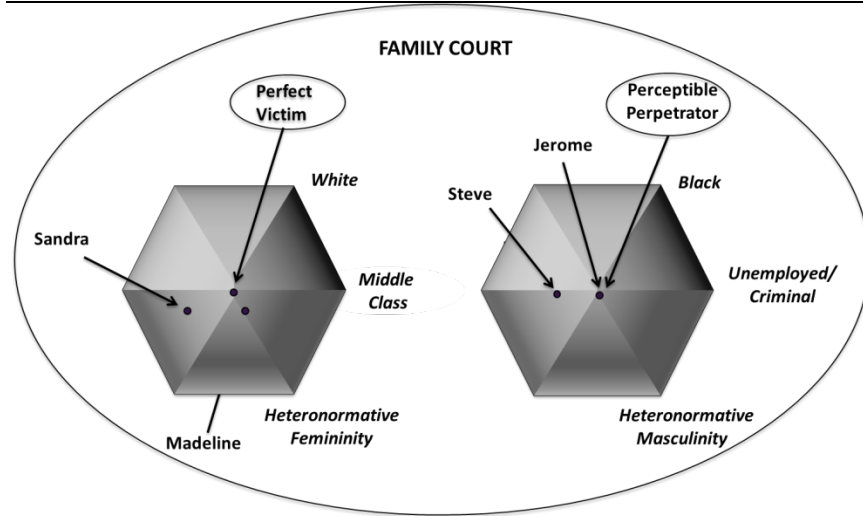


Slide 1 depicts the individual identity of a plaintiff in a domestic violence case alongside a co-identity—in this instance, that of the perfect victim. However, we know that some women who are unlike the perfect victim are successful in cases involving claims of domestic violence, and some women who seem more like the perfect victim are unsuccessful. The question remains what accounts for the difference? One answer is that outcomes also depend on the identity of the perpetrator—the person on the other side of the case—who I call the perceivable perpetrator. Like the victim identity, the identity of the perpetrator is hinged on racialized and sexualized assumptions—this time, about criminality. Investigating this question therefore requires extending critical feminist theory to perpetrators, who have not typically been the subject of a feminist analysis of gender violence. Returning to Slide 1, we must also examine the defendant, whose individual identity may converge or diverge from the perceivable perpetrator identity.

<sup>3</sup> See, e.g., Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061 (2006); Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 96–113 (2008).

Returning to my two family law cases, how did the parties measure up to the perfect victim on the one hand and the perceivable perpetrator on the other?

## Slide 2



Slide 2 depicts two hexagons crossed by lines that each stands for an absolute value: white, middle class, and heteronormative. The dots in the hexagon on the left depict where Sandra and Madeline are located in relation to those values. Both were heterosexual women employed in semi-professional jobs, but they differ in other ways. The successful victim, Sandra, is an African-American woman. Therefore, I have placed her away from the "White" line. She had also been arrested several times as the perpetrator in incidents with the same defendant and on one occasion was charged with resisting arrest. Therefore, I have placed her far from the heteronormative line. Stereotypes about African-American women and other aspects of her individual gender expression place her further from those values, as well. In contrast, the unsuccessful victim, Madeline, is an American-born Latina for whom English is a first language. She had no history of fighting back or being arrested and she was very feminine in her gender expression. She also appeared traumatized and very vulnerable during her testimony. Because of these various features of her expression, I placed her closer to the white and heteronormative lines than Sandra. Yet ultimately Sandra was the more believable victim. I argue that this is because of the way the identities of the *defendants* played out in the courtroom, as depicted in the slide.

Sandra appeared opposite her African-American ex-boyfriend, Jerome, and Madeline appeared opposite her ex-husband, Steve, who is Latino and non-Latino. Both men were unemployed and again, both had been convicted of domestic violence. In the paper, I discuss more specifically what kinds of stereotypes were in play with the men in these cases and how stereotypes about men of color conform with the perceivable perpetrator image, just as stereotypes about women of color push them away from conforming with the ideal victim. I also discuss the ways in which identity is not static, but is performed within particular settings. I do not think we can assume that Steve had an easy court win because he was perceived as White, but his race certainly did play a factor. While Sandra's persona did not conform to the perfect victim, Jerome's did not conform to a very limited repertoire of available acceptable images for African-American men in this type of setting. That left him as what scholar Frank Rudy Cooper calls the bad Black man: a quintessential, perceivable perpetrator.<sup>4</sup> Although we cannot know precisely how the judge reached his decision, the routine operation of stereotype suggests that Sandra received her orders for the wrong reasons no matter how right it was for her to receive them based on the evidence in the case, and Madeline was not awarded supervised visitation based on something other than the merits of her case. My conclusion is that if we want to dismantle the stereotypes underlying the perfect victim and understand the differences in case outcomes such as these, we have to acknowledge and dismantle the stereotypes underlying the perceivable perpetrator, as well.

**MORRISON:** The title of the work-in-progress on which my remarks are based is *That's Just Not the Case—The Heteronormativity of Separation Based Interventions and Why They Won't Help End Domestic Violence*. What I do in this work is to challenge an assumption grounding what is the most prominent legal intervention designed to address intimate partner violence, that being to separate the parties whether through arrest, incarceration, stay away and protective orders or a force/required divorce. The assumption inherent in the law's efforts to keep an individual away from a party whom he, and I am being purposely gendered here, has abused, is that by doing so a batterer has been held accountable for his choosing to be abusive and a victim is safe and well on the road to empowerment. The idea is that this leads to furthering the anti-domestic violence movement's goals of ending intimate partner and gender-based violence. I argue that separation-based

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<sup>4</sup> See Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853 (2006). See also Slide 2.

interventions do not hold a batterer accountable, do not create victim safety and empowerment and ultimately will not help end domestic violence because separation remedies are heteronormative.<sup>5</sup>

I am sure that some domestic violence advocates, activists and scholars, including some in this room, think that being heteronormative is the least of the problems with separation-based remedies and that a more pressing issue is that separation remedies regularly fail to do what they are designed to do, which is to end violence being perpetrated against a particular person at the hands of a current or former intimate partner. Leigh Goodmark and others have pointed out that there are numerous accounts of separation not even effecting minimal interruption to abuse, let alone ending it.<sup>6</sup> Martha Mahoney has identified the problems with separation by calling attention to the increase in violence upon separation.<sup>7</sup> My point continues this thread by asserting that even if separation actually did stop person X from abusing person Y, every time it is utilized it has intended and unintended consequences that help perpetuate intimate partner violence because, among other reasons, separation-based interventions are heteronormative.

When I say heteronormative, I mean punitive rules that force us to conform to hegemonic, heterosexual, and cisgender<sup>8</sup> standards for identity and practice. Heteronormativity constructs normative sexualities and impacts not only those who are LGBT identified, but also those who identify as heterosexual and cisgender. Fundamental to heteronormativity are sexual and gender conformity, which are directly counter to gender equality. Conformity to sexual and gender norms are socially supported aspects of the attitudes and behaviors of a person who chooses to utilize abuse—so too is the abuse used to force heteronormative sex and gender behaviors upon victims. Heteronormativity and domestic violence are similarly problematic in that they both do the following: perpetuate a dominant/ subordinate social structure and help maintain patriarchy, both of which have as a cornerstone gender conformity, which are part of gender subordination.

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<sup>5</sup> MICHAEL WARNER, FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY xxi-xxv (1993).

<sup>6</sup> LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 81 (2012).

<sup>7</sup> Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation* 90 MICH. L. REV. 1 (1991).

<sup>8</sup> The first recorded Usenet post of *cisgender* was in the *alt.transgendered* Usenet group in May of 1994 by Dana Leland Defosse. In April of 1996, Carl Buijs, a transsexual man from the Netherlands said in a Usenet posting “As for the origin; I just made it up.” The origin of the term is logically based on the Latin prefixes, in which “cis” (“on the same side”) is the opposite of “trans” (“on the opposite side”). These terms find use in a range of subjects, including Geometric isomerism in chemistry.

I single out separation interventions because they are the most prominent way the law works against intimate partner violence. I have come to the conclusion that separate interventions may not be completely eliminated they may bring about short or even longer-term safety for individuals, families and friends being victimized. However, the effects of separation can be over punishment. As Jeannie Suk has noted, in punishing a misdemeanor, the state has terminated an individuals' relationship or at the very least made maintaining the relationship a criminal action.<sup>9</sup> Also, separation does not actually prevent or end domestic violence. There is nothing prohibiting the abusive individual from starting a new relationship and continuing with the old "bad behaviors." The message from the state is essentially, "Try again. Maybe you'll get it right this time."

One might argue that criminal law's utilization of separation actually changes the heteronormative structure by prescribing what is and is not proper masculine behavior. This argument is that criminal laws are broadcasting proper masculinity and thus countering the heteronormative rule by articulating that it is not okay to abuse your spouse or girlfriend and that if you do, the legal system is going to separate you and possibly end your relationship. Arguably, this changes the standard notion of at least gender roles and behaviors within a heterosexual relationship. However, I argue that the opposite results because the criminal law system's coercive control is only implemented with the victim's involvement, and she is constructed in a particular manner and with a particular role. A victim must call the police and cooperate with prosecutors and child protective service. It is still the victim, gendered woman, who is seen as responsible for what has occurred and is still being controlled, this time by the system instead of her partner. Fundamentally, what criminal law is attempting to do is to construct the way individuals behave with intimate partners and doing so by either changing or ending the relationship. However, the relationship is not the problem—the batterer's behavior is. What needs to happen is to get that behavior to change. Criminal interventions may not be able to do this and separation generally does not accomplish this. Not only is changing a relationship not the job of the criminal legal system, it is an impossible task for this system.

State interventions, particularly criminal law based ones, exist in order to punish behaviors that are supposed to be harmful to society in order to specifically or generally deter, incapacitate, rehabilitate or

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<sup>9</sup> See Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2 (2006); JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* (2009).



provide retribution. I argue that if separation based interventions accomplish any of these goals, it is only retribution, and it is retribution based not on the needs of victims or on anti-subordination ideals, but spite. The state is doling out punishment for making it get involved in personal affairs. But even if the criminal law system's responses, including separation, stop one particular individual from violating the domestic violence statutes of a given state, this does not mean: a) that he has abandoned *all* abusive behaviors, just those that violate the law; b) that he has changed mindset about the place or the status of the particular woman he is involved with or women as a whole; or c) anything has been done to undermine heteronormative-based gender subordination. In the paper I explore alternatives such as restorative justice and transformative justice. In the end we must ensure that whatever the approach, it is, among other priorities, not heteronormative.

**GOEL:** My talk today is about female complicity in domestic violence. I wanted to look at a type of violence that is usually perceived as occurring only in certain countries—violence perpetrated by women on other women, not in the context of same-sex relationships, but in situations where there is a cultural norm supporting the violence. We see it sometimes with female circumcision, female genital mutilation. We also see it in India in dowry deaths or bride burnings. I really wanted to unpack that and figure out—why we perceive it as being culturally entrenched why it happens. Could it help us understand why violence against women is an international phenomenon?

The purpose of this paper is really twofold: first, is to examine that phenomenon of violence against women perpetrated by other women in that context of dowry deaths and bride burnings; second, to uncover the ways in which we limit our understanding of violence against women by notions of who the perpetrator is and who the victim is. Our understanding of domestic violence, and particularly our understanding about violence against women, is a story of worldwide oppression where the picture of our victim is female, and the perpetrator of violence is usually a man. But some cases defy that understanding and they force us to revisit those notions of women and of violence altogether.

I am struck by the way we approach domestic violence differently in different contexts even though we recognize it to be a universal phenomenon, and we recognize the world to be universally patriarchal. Depending on the context, we problematize it very differently and we perceive it very differently. So, I will look at dowry deaths in India. There is a phenomenon in India that involves young brides, or women who have not been married for a very long time, being subjected to harassment, torture, and abuse in the homes of their in-laws. Most are living in a joint family system where they live with their husband and his

parents. These brides are harassed because they did not bring enough dowry or because the groom's family wants the bride's parents to provide money on an ongoing basis. The bride or the young woman in this case is used as leverage. Her parents are quite aware that if they do not comply with the requests or demands for money, their daughter will have a much more difficult experience in her marital home.

These brides are harassed for more dowry, abused, and sometimes even killed. The most common method of killing in these cases seems to be to douse her with kerosene and light her on fire. The in-laws can call it a kitchen accident; "she was cooking something, and her sari (six yards of fabric she's wearing) caught on fire, (because in India, all of the cook stoves are gas stoves—nobody uses an electric stove) and she was just enveloped in flames, there was nothing we could do."

In India, we have seen in ten years, 79,404 registered cases of dowry death.<sup>10</sup> That cannot be happening where the mother-in-law in the home does not know. She is either complicit, or she is at least aware and that is a very scary thing. Some women who survive have said, "my mother-in-law was the one who held the match." We hear horrible stories that in fact, the mothers-in-law were involved.

We are not really sure about the numbers of mothers-in-law who participate because we do not have studies on those women who participate in these killings and attempted killings.

It is difficult to determine conclusively why that happens and how much it happens. First of all, because the very notion of women killing at all is aberrant. It is such a small set of violent crime. The notion of women killing other women is so tiny that you cannot even find it in the literature; you cannot find a study.

Why do these women kill? We do have a number of theories, almost all of which portray the other woman, the mother-in-law, as also a victim: 1) because women are so perpetually devalued that they begin to see themselves and other women as worthless and subhuman; 2) because oppressing women is a kind of survival mechanism—they know if they do not oppress the other woman, they might be oppressed themselves; 3) because it is some kind of resistance for them—it is their last grab at power in a world where they have no power at all or very little power; and 4) we also hear that because it is part of their culture, which is a complex interaction of history, religion, social class, social familial circumstances, wherein this conduct even though it is not acceptable, it is understandable. All four of those theories involve the perpetrator woman being some kind of victim. It is only the last theory that includes the idea

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<sup>10</sup> NAT'L CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, CRIME IN INDIA 2013 (2014), available at <http://ncrb.gov.in/index.htm>.

that they are just evil, power hungry, angry people. It is only that one that actually involves some full agency on the part of the perpetrator woman. I wanted to ask then, how is this qualitatively different than the other kinds of female-on-female violence that we are familiar with?

We actually do have three primary archetypes of women who hurt other women. The first archetype is the evil stepmother. The evil stepmother is punishable because she cannot love other people's children as she does her own children. She is supposed to be compassionate and nurturing, but the evil stepmother sees herself in competition with these children for the husband's resources. The second archetype is the whore-house madam who exploits other women and their sexual favors for monetary profit for herself. It is disconcerting to us that she exploits her own kind, but we also find it a little bit admirable because she is entrepreneurial and she is exploiting a weakness, the sexual insatiability of men. And the third archetype is the evil mother-in-law who is griping and controlling because her son has married someone who she thinks is not good enough for him. But even this is not an evil mother-in-law who will kill.

So, the real question is how do we respond to this kind of violence? We can call it cultural and intractable and do nothing; we can say it is cultural and systemic but changeable, and try to change this huge problem of attitude toward women and say that the mothers-in-law are also victims; or we can consider those women evil, aberrant, and deserving of punishment.

We do not have clear ways to understand where the line is between victim and offender in the context of women, because for women most of our theories limit their agency and describe them as victims, too. Many believe the system itself helps to perpetuate violence, they believe that we have men who are trapped in a cycle of violence just the way women are trapped in a cycle of violence, and yet we still believe that those men are in need of punishment, accountability, responsibility, reform, or rehabilitation. But unless women fit one of those archetypes, we really have no idea what to do with them. We are really stuck with our notion of women being victims all the time and the perpetrators always being men. So, there are no ways that women can legitimately express their anger, their frustration, and their lack of power. Our notions of how victims are situated and how offenders are situated prevent us from dealing with these particular kinds of violence.