

2003

Addressing Domestic Violence through a Strategy of Economic Rights

Donna K. Coker

University of Miami School of Law, dcoker@law.miami.edu

Follow this and additional works at: http://repository.law.miami.edu/fac_articles



Part of the [Law and Gender Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Donna K. Coker, *Addressing Domestic Violence through a Strategy of Economic Rights*, 24 *Women's Rts. L. Rep.* 187 (2003).

This Article is brought to you for free and open access by the Faculty and Deans at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

Addressing Domestic Violence through a Strategy of Economic Rights

*Donna Coker**

My own work focuses really on the domestic scene. The work I do is violence against women in the United States and U.S. policy. My work primarily deals with the effects of violence against women on the domestic scene.

My recent work deals with the effects, or what I think may be the effects, of the increased mandatory criminal justice interventions in domestic violence policy on women who are marginalized as a function of race, class, or immigration status. There are women who are distinguished by their vulnerability; their increased and heightened vulnerability to interpersonal violence as well as their heightened vulnerability to workplace violence and street violence, as well as their heightened vulnerability to government violence. And one of the ways in which we are seeing what I refer to as "government violence," state-initiated violence, is an index to what we might think of, in terms of police interaction and so forth, which continues to be, of course, a problem in a number of communities of color primarily, but also child protection and the removal of children from households, such as we saw as the subject of a lawsuit some of you may know about in New York where the children are placed into foster homes that are quite clearly more harmful environments than they came from, and they are re-

moved on the basis that domestic violence simply occurred in the household, not that the children were actually harmed or witnessed the violence.

In addition, we see increased numbers of women who are, themselves, arrested. And this, in turn, in addition to child protection, has trickle effects in terms of losing some of the protections that the law would provide. For example, the family law arena now becomes a wash: Well, now you are both abusers anyway. In understanding the international context, trafficking women, we talk about the importance of understanding women's political, social, civil and socioeconomic rights. Much of the current U.S. policy and much of the U.S. debate in public, I think, really fails to examine violence against women domestically in that same sort of context.

Now, certainly feminists who have been working in domestic violence have understood that this was, in fact, a civil rights issue; and that women's political, social, and economic circumstances were every bit a part of women's vulnerability to violence. But that is pretty much lost, I think, in the overwhelming policy and the overwhelming focus and force of much of the U.S. response to domestic violence.

*Donna Coker has been involved in the battered women's movement for more than twenty years as a social worker, community activist, attorney, and legal scholar. Her primary concern is the development of domestic violence policy and law that responds to the needs of women who are

marginalized as a function of race, poverty, and immigration status. Professor Coker teaches substantive criminal law, family law, evidence, and domestic violence related law at the University of Miami School of Law.

Right now, we are spending millions of dollars on domestic violence intervention, which is a great thing; but most of that money is going to criminal interventions. And if you look at the funds generated from VAWA 1 and VAWA 2, you can trace them and see that most of that money — and I can show you — is going to criminal justice interventions. There are high points and ways in which that was not true. There were the civil rights provisions, but we know what the Court did with that in *Morrison*. There is immigration relief part of VAWA 1 and VAWA 2. We have the Family Rights Act for a handful of women; and we have some measures happening in housing.

But most of what we are doing, if you look at the country, is that we are funding prosecution and police, and we are training them up the wazoo, and that is where the money is going. In addition to that, battered women's advocates spend a significant part of their time — those who are on the payroll in some way as battered women's advocates — monitoring police and prosecutor response. There's nothing obvious or necessary about this allocation of dollars or human capital.

In fact, poor women are more vulnerable to repeat violence; yet, relatively few dollars are allocated for measures that would render them less vulnerable, such as transportation or education or job training. Without legal representation, women are unable to, again, benefit from much of domestic violence law reform; yet, women seldom have a legal right to state subsidy for an attorney, and there are too few lawyers available.

Without adequate resources, women are unable to relocate and, therefore, are unable to then escape from the reach of controlling and violent ex-partners. Few dollars are allocated for emergency relocation and long-term housing. Women who are escaping well-funded and well-connected dangerous men need the equivalent of a witness protection program; but we do not have one that targets battered women.

The critical importance of women's economic situations and circumstances to their exposure to violence and their ability to escape from violence is particularly missing, I think, from much of current U.S. policy approaches and lay response to domestic violence. Inade-

quate material resources render women more vulnerable to violence. Inadequate material resources increase the batterers' access to women who do try to separate. Inadequate material resources are a primary reason why women do not try to separate.

Some battering men appear to seek out women that are economically vulnerable; but even if this were not the case, the batterer's behavior often has a devastating economic impact on the victim's life. Abusive men cause women to lose jobs, educational opportunities, careers, homes, savings, their health, their ability to enter the workplace. Battering renders some women permanently disabled and puts others at a heightened risks for HIV infection. Women become homeless as a result of battering. Their homelessness is made more difficult to remedy because they are battered, and they are vulnerable to further battering because they are homeless. Frequently, as a result of the battery, they become estranged from family and friends, if they had such, who might otherwise provide them with material aid. The violence that women face in their intimate relationships, it has devastating economic impact on women's lives.

In addition, those women who are economically vulnerable have an increased vulnerability to violence. So you see this kind of interactive effect. I'm going to skip over the research. We can come back to that, if you don't believe me; but I think this crowd probably does. I don't know. I'm going to move on. Also, race, immigration status, and class shape women's vulnerability to violence, shape the kinds of responses that women get from the services that are available, that are supposed to remedy or assist; and much of U.S. policy, again, ignores that reality.

I do not want to overstate. Both VAWA 1 and VAWA 2 have provisions that give funding to programs for underserved communities; that is great — but for the most part, it is a drop in the bucket. Again, race, ethnicity, immigration status, culture, language structure the responses that women are likely to receive from helping institutions, as well as the way in which women are likely to understand the battering, as well as the manner in which women understand the abuser's behavior.

What I wanted to suggest here, and what I have suggested in an article that develops this more thoroughly, which is outside, if you are in-

terested, is a strategy, one I think of as a fairly modest proposal, to try to address this failure to focus on the critical importance of women's economic circumstances. It is a wedge strategy, truly, to try to begin to turn the conversation. So much of the conversation now at the federal level and at the local level, at every level, is focused on criminal justice response.

In my home city of Miami, we have a conference on "a coordinated community response," a buzz word for those of you who have done domestic violence work. What that means is that we are going to get the police and the prosecutors together. There will be service providers, but the focus will be the police and prosecutors working together. That is what I want to change.

It is a strategy. I want the police to come when I call them. Trust me. I want them to come when I call them; but there is a need to begin to focus the attention on the critical importance of women's economic circumstances and their ability to utilize any of the services, and then to recognize that these state interventions have desperate and sometimes devastating impacts for particular women.

So the strategy that I am suggesting is that — is the use of what I am calling "a material resources test." The test is this: Every domestic violence intervention strategy should be subjected to a material resources test.

What do I mean? Every anti-domestic violence law, policy, funding priority, administrative rule, you name it, should be subjected to a material resources test, which asks: What is the impact, what is the effect of this law, policy, regulation, et cetera, on the material resources of the women who are likely to come in contact with this law, policy, regulation, et cetera? Will this have an impact that either primarily or secondarily gives women greater access to material resources? Because women's circumstances differ in ways that dramatically affect their access to material resources, further, I argue, the standard for determining whether or not a given law, policy, et cetera, passes muster under a material resources test should be the situation of the women who are in the greatest need, those who are dramatically affected by the inequalities of gender, race, and class.

That is the test case. This argues, in part, then, for an emphasis on local assessment and,

at the federal level, for an emphasis on loose policies that allow for local assessment.

So what does that mean? That means not giving VAWA money only to states that enact pro-arrest policies, but rather requiring local or state coalitions against domestic violence, who are usually the mechanisms by which the battered women's movement has a voice in establishing these policies, do this kind of assessment.

How will this impact the women in this locale, and how are we going to determine that? Will it assist in providing women with more economic resources? Domestic violence laws and policies may directly provide material resources — that's kind of obvious — such as housing, food, clothing, money — I like money — or they may increase resources indirectly through the availability of services, such as job training, child care, and transportation.

Those programs, laws, or policies that provide direct aid should be preferred when that is possible, but even when the primary goal of an intervention strategy is not the direct allocation of material resources, we should still prefer methods of implementation that are likely to, directly or indirectly, improve women's access to material resources. Now, you see, this is a modest little proposal, but I have wholly immodest goals in mind.

The material resources test, I think, can address four problems with current tendencies in our response to domestic violence, our policy response. Two I have already mentioned: One, the undervalue of the importance of race and ethnicity and immigration status in shaping women's experience of battering and understanding likely institutional responses.

Two, the way in which poverty makes women more vulnerable to violence, the way in which that is often ignored in our policy responses; but in addition to other problems with domestic violence response that I think this test might be of assistance with is that — it is something that I've alluded to before — the development of increasingly punitive criminal justice sanctions against batterers with questionable, at best, benefits for battered women and have the increased control — state intervention control of women, as I mentioned at the outset.

And, fourth, the pervasive and incorrect assumption that separation from an abuser equates with safety, an assumption like you talk about in Q and A, but it is buried in most of our law reform efforts in domestic violence including protection orders, et cetera.

Establishing fewer women and women of color, women in the greatest extreme, women who have the greatest vulnerability as the standard for assessing the impact for material resources ensures that the needs of these women are no longer marginalized. It also means putting these women at the center of assessment is important for a second reason; that is, the experience of poverty, and hence the manner in which poverty shapes the experiences of battery, is further shaped by experiences that are directly related to race and ethnicity. For example, the experience of poverty for urban African American women is qualitatively different than the experience of poverty of many white urban women. Poor African American women in urban areas are much more likely to live in areas of high overall poverty rates. Even though African American and white women have similar incomes, their access to social services, police protection, and their exposure to general violence is often quite significantly different.

The most obvious impact of applying the material resources test is to shift significant money to direct aid for victims, one hopes, and to target more significant aid to the women who are in the greatest need, especially poor women. There are many possible steps toward this goal, modest steps that have been proposed by others. Current legal remedies that enhance resources for battered women could be made much more effective. For example, crime victim compensation requirements that usually require that the victim cooperate with the prosecution of the batterer sometimes have other kinds of limitations that render them not terribly helpful for large numbers of women.

Well, clearly that fails. You want to make them accessible. In addition, compensation is frequently available for psychological counseling, victim compensation, but not for the material needs of the victim. That varies, of course, by state. Law reform that increases criminal penalties without evidence of gains for battered women should be disfavored, and law that diminishes battered women's material resources

should be eliminated. The material resources test should also be incorporated into federal funding criteria for domestic violence intervention projects; and as I mentioned already, for example, federal dollars should not support state-wide mandatory arrest policies but rather should require states to engage in this kind of assessment. A material resources approach may also suggest changes in the way in which lawyers engage in legal representation of battered women, some of which you are familiar with.

For example, legal services in Tampa, Florida, my state, formed an organization called ChildNet in response to the material and social support needs of their battered women clients, the thought being that providing traditional legal resources in a vacuum, without recognizing the importance of women's economic situation, was not assisting their children.

Economic development, I would suggest supports domestic violence prevention, so-to-speak, as economic development is equal to domestic violence prevention work; and that economic development that targets women is domestic violence prevention work. Funding for violence research should address the needs of poor women and especially poor women of color with greater specificity and escape the black/white paradigm that limits much of the current domestic violence research because without that research, it will be impossible to do the material resources test and to determine what the impact of any given policy would be.

The measure of the efficacy of any domestic violence intervention strategy must account for, as much as possible, the various forces that mediate and shape women's experiences of battering. The material resources test attempts to do this by requiring an inquiry into the likelihood that a given intervention strategy will result in increased material resources for women, and particularly, for poor women, for women of color and immigrant women.

Think of it as an environmental impact rule that can act as, hopefully, a lever to begin to allow us to talk about all the other kinds of critical needs. And if we have to do that in terms of violence prevention, if we have to do that in terms of crime prevention, given the overwhelming crime control response, then maybe that is the way to go.