

4-30-2014

## A Home with Dignity: Domestic Violence and Property Rights

Margaret E. Johnson

Follow this and additional works at: <http://digitalcommons.law.byu.edu/lawreview>

 Part of the [Family Law Commons](#), [Housing Law Commons](#), and the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 BYU L. Rev. 1 (2014).  
Available at: <http://digitalcommons.law.byu.edu/lawreview/vol2014/iss1/3>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

# A Home with Dignity: Domestic Violence and Property Rights

*Margaret E. Johnson\**

## ABSTRACT

*This Article argues that the legal system should do more to address intimate partner violence and each party's need for a home for several reasons. First, domestic violence is a leading cause of individual and family homelessness. Second, the struggle over rights to a shared home can increase the violence to which the woman is subjected. And third, a woman who decides to continue to live with the person who abused her receives little or no legal support, despite the evidence that this decision could most effectively reduce the violence. The legal system's current failings result from its limited goals—achieving a narrow concept of short-term safety premised on physical separation in the home. This Article argues for creating a comprehensive theory that addresses the rights to a home when there is domestic violence by focusing on each party's dignity, the importance of home and ending domestic violence, as opposed to merely “safety.”*

*There are several laws that address the home when there is domestic violence. The civil protection order (CPO) laws are the most prevalent; they exist in all fifty states and Washington, D.C. While most offer a vacate remedy to exclude the perpetrator of abuse from the shared home, they do so with varying effectiveness and petitioner success rates. Also, very few provide any economic support to maintain the home or find a new home if respondent is not excluded. And all 51 jurisdictions provide very few options to support a woman's choice to stay in the shared home with her abuser, despite her decision that it would best end the domestic violence.*

---

\* Associate Professor and Co-Director, Center on Applied Feminism, University of Baltimore School of Law. I am indebted to the feedback and comments from Professors Matt Fraidin, Deborah Epstein, Robin West, Carolyn Grose, Rachel Camp, Lisa Shabel, Kate Kruse, Jessica Miles, Jill Engle, Audrey McFarlane, Leigh Goodmark, Dionne Koller, and Michele Gilman. I was assisted by amazing research assistants Lana Castor, Ashley Wagner, Sarah Witri, Amy Lazas, Megan Morrisette. I also want to thank the Georgetown Law Library, The University of Baltimore Summer Research Fellowship, and the extremely helpful editors of the Brigham Young University Law Review.

*Beyond these shortcomings, the CPO vacate provisions also clash with property law in problematic ways for the respondents. Thirty-four jurisdictions permit vacating a perpetrator from his home, despite being the sole owner of the property. And there is a trend of making these once-temporary vacate orders permanent. This clash can make the legal system seem unfair to perpetrators, which can lower their rate of compliance with the CPO. As a result, perpetrators may increase their violence against women subjected to abuse.*

*This Article proposes a renewed anti-domestic violence movement that is focused on the dignity of and greater home access for both parties. Such a movement could focus on expanding existing laws that would both promote dignity and end domestic violence while ensuring greater home access. For instance, one proposal is for more thorough court fact finding in making the vacate order that includes the abuse as well as each party's risk of potential homelessness and the extent of their personhood interests in the home. Another proposal is to increase the number of home options for the parties by creating shelters for men who are abusive, more jurisdictions that require alternative housing through a CPO, and increased funding for low-barrier battered women shelters and transitional housing.*

ABSTRACT .....	1
INTRODUCTION.....	4
I. THE GOALS OF ENDING DOMESTIC VIOLENCE, SUPPORTING DIGNITY, AND AFFIRMING THE IMPORTANCE OF HOME .....	7
A. Ending Domestic Violence .....	7
B. Supporting Dignity .....	9
C. Affirming the Importance of Home.....	11
1. Home and domestic violence .....	11
2. Dignity, home and property .....	13
D. Ending Domestic Violence, Supporting Dignity, and Affirming the Importance of Home .....	16
II. THE CURRENT LEGAL SYSTEM .....	17
A. Three Categories of Laws .....	17
B. Petitioner Chooses to Stay in Home and Exclude Respondent.....	18

1. CPO’s vacate provision, eviction defense and lock-change laws.....	18
2. Benefits.....	21
3. Shortcomings.....	22
C. Petitioner Chooses to Leave Home and Respondent Stays in Home.....	33
1. CPO alternative housing provision, early lease termination, anti-discrimination, and shelter and transitional housing funding laws .....	33
2. Benefits.....	35
3. Shortcomings.....	36
D. Chooses to End Violence and Stay with Respondent in Home .....	45
1. CPO no further abuse provision.....	45
2. Benefits.....	45
3. Shortcomings.....	46
III. PROPOSAL: A HOME WITH DIGNITY EVEN AMIDST DOMESTIC VIOLENCE .....	47
A. Current Obstacles .....	47
B. Feminist Domestic Violence Movement Should Focus More on Dignity and Greater Home Access .....	49
C. Focused on Dignity, the Domestic Violence Movement May More Effectively End Abuse in the Home .....	51
1. Expand criteria for home possession based on goals of ending domestic violence, supporting dignity, and affirming the importance of home.....	52
2. Increase the number of home options based on goals of ending domestic violence, supporting dignity, and affirming the importance of home.....	53
CONCLUSION.....	54

*Judge Bruce S. Lamdin ordered Gordan Bisnath not to abuse, threaten or harass [Parbadee Ann Bisnath, Mr. Bisnath's ex-wife with whom he still shared a home]. . . . [Judge Lamdin] directed the 48-year-old to complete an abuser intervention program. But when it came time to address the victim's request that her abuser not be permitted to contact her or return to their home . . . the judge declined. "Where is he going to live?" Lamdin asked . . . .*<sup>1</sup>

*"He's making the home unsafe for her, so he's the one who should have consequences. . . . That she and the children should be homeless because he's breaking the law makes no sense."*<sup>2</sup>

*"When it comes down to a protective order, [w]ho owns the property has little or nothing to do with anything."*<sup>3</sup>

## INTRODUCTION

In this Article, I examine intimate partner violence and determine that the legal system does not appropriately address all of the issues that are critical to supporting each party's need for a home.<sup>4</sup> As a result of this problem, and as demonstrated by the *Bisnath* case set forth above, domestic violence can increase, and the

---

1. Jennifer McMenamin, *Judge's action question again: After serving suspension for conduct, Balto. Co. jurist criticized for failing to issue routine protective order in domestic violence case*, BALTIMORE SUN (October 22, 2008), [http://articles.baltimoresun.com/2008-10-22/news/0810210094\\_1\\_domestic-violence-judge-lamdin](http://articles.baltimoresun.com/2008-10-22/news/0810210094_1_domestic-violence-judge-lamdin).

2. *Id.*

3. A comment posted on the Baltimore Sun's webpage in response to the Bisnath story. George-WNEC, Comment to *Anyone Want to TRY to Defend Judge Lamdin?*, THE BALTIMORE SUN TALK FORUM (Oct. 23, 2008, 8:04 AM), <http://talk.baltimoresun.com/showthread.php?t=168277>.

4. I will discuss abuse by men against women throughout this article even though there is clear evidence that women can abuse men and that abuse occurs in same-sex relationships as well. I have made this choice because I am focused on the most prevalent form of domestic violence, coercive controlling terrorism by a male intimate partner on a female, which involves the operation of power and control through the use of various forms of abuse. Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476, 481–82 (2008). I also make this decision based on the research that shows women subjected to male-perpetrated domestic violence are by far the largest majority of domestic violence victims. See *id.*; *Domestic Violence Facts*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE, <http://www.ncadv.org/files/DomesticViolenceFactSheet%28National%29.pdf> (indicating that 85% of persons subjected to abuse are women). See also Margaret E. Johnson, *Redefining Harm, Reimagining Remedies and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1110 n.4 (2009). I make this decision with concern of perpetuating stereotypes based on gender or domestic violence. See generally Leigh Goodmark, *Transgender People, Intimate Partner Abuse and the Legal System*, 48 HARV. C.R.–C.L. L. REV. 51 (2013).

parties can become homeless. Our legal system does not do what it can to support and maintain each person's dignity. This problem results from the legal system's limited goals—achieving a narrow concept of safety premised on physical separation in the home. This Article argues for creating a comprehensive theory that addresses the rights to a home when there is domestic violence by focusing on each party's dignity, the importance of home, and ending domestic violence, as opposed to "safety." To explore this new theory, this Article discusses three scenarios that a woman subjected to abuse might choose when she shares the home with her partner who has abused her. First, she might choose to separate from her partner by excluding him from the shared home while she stays in it. Second, she might choose to separate from him by leaving the shared home and allow him to stay in it. Third, she might choose not to separate, but rather to continue the relationship and stay in the shared home.

Currently, the laws addressing the home when there is domestic violence do not adequately address the following questions: What goals should govern disputes relating to a shared home, or the provision of a new home, when there is domestic violence? How should the courts decide who should stay in the shared home? What conditions should govern that party's period of possession and the other party's exclusion? How can the domestic violence system reconcile its laws with property law? If not permitted to stay or not interested in staying in the shared home, can there be another home for one of the parties? What conditions should govern the identification, relocation, and maintenance of the new home? How can the domestic violence movement work toward greater access to the creation of a system where there are homes without domestic violence?

There are several laws that address rights to the home shared by a couple when there is domestic violence in the relationship. The civil protection order (CPO) laws are the most prevalent laws addressing domestic violence; they exist in all fifty states and Washington, D.C.<sup>5</sup> Although these laws vary, they are generally short-term solutions, and focus primarily on injunctive relief designed to address violent crimes committed by a person in particular forms of relationship with another.<sup>6</sup> The available relief often includes a provision that enjoins

---

5. *See infra* Part II.B.1.

6. *Id.*

future violence by the abuser, the respondent in the action; an order for respondent to stay away from the person subjected to abuse, the petitioner in the action; and an order that the respondent not contact the petitioner.<sup>7</sup> Other relief may include counseling, child custody, child support, and excluding respondent from the shared home, often called a “vacate” order.<sup>8</sup>

CPO vacate provisions vary greatly. For those subjected to abuse, CPO laws could do more to ensure they have a home and all the benefits that come from having a home. For instance, only some states provide remedies that support the petitioner in maintaining her home or obtaining a new home, such as ordering respondent to contribute to rent, mortgage, and/or household expenses or to provide an alternative home.<sup>9</sup> Such provisions are not available in every jurisdiction, and their remedies are not very comprehensive. In addition, the 51 jurisdictions provide very few options to support a woman’s choice to stay in the shared home with her abuser, despite her decision that it would best end the domestic violence.<sup>10</sup> But research shows that when courts permit women to exert their agency, they are best able to address the domestic violence.<sup>11</sup>

At the same time, the CPO vacate provisions clash with property law in problematic ways for the respondents. Thirty-four jurisdictions permit respondents to be vacated from their home, despite being the sole owners of the property.<sup>12</sup> And there is a trend of making these once-temporary vacate orders permanent, as seen currently in New Jersey.<sup>13</sup> This clash can make the legal system seem unfair to respondents, which can lower their rate of compliance with the CPO. As a result, respondents may increase their violence against petitioners.<sup>14</sup>

---

7. See generally Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 910–1030 (1993).

8. *Id.*

9. See *infra* Part II.B.3.

10. See *infra* Part II.D.

11. Johnson, *supra* note 4, at 1148 (citing Angela Moe Wan, *Battered Women in the Restraining Order Process: Observations in a Court Advocacy Program*, 6 VIOLENCE AGAINST WOMEN 606, 615 (2000)).

12. See *infra* Part II.B.3.

13. N.J. STAT. ANN. § 2C:2529 (2012).

14. Deborah Epstein, *Procedural Justice: Tempering the State’s Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1846 (2002).

The issue of the home in domestic violence law needs greater attention for several reasons. First, domestic violence is a leading cause of individual and family homelessness.<sup>15</sup> Second, the struggle over rights to a shared home can increase the violence to which the woman is subjected.<sup>16</sup> And third, a woman who decides to continue to share a home with the person who abused her receives little or no legal support, despite the evidence that this decision could most effectively reduce the violence.<sup>17</sup>

This Article proceeds in three parts. Part I will analyze the goals that should guide our legal system when there is domestic violence and the parties share a home: ending domestic violence, supporting each party's dignity, and affirming the importance of the home. Part II analyzes the current legal landscape of laws that governs the home when domestic violence occurs and examines its benefits and shortcomings. Part III presents a proposed way forward: expanding domestic violence advocates' focus to include dignity as an advocacy strategy for new or expanded laws identifying or creating homes for persons experiencing or perpetrating domestic violence.

## I. THE GOALS OF ENDING DOMESTIC VIOLENCE, SUPPORTING DIGNITY, AND AFFIRMING THE IMPORTANCE OF HOME

As stated above, the legal system has limited goals in addressing domestic violence, namely achieving short-term safety through physical separation, including separation of the parties who might share a home. This vision of safety has resulted in laws and funding streams that do not always promote the safety of women subjected to domestic violence and do not always address the other important goals of ending domestic violence, supporting the dignity of individuals and utilizing the home to achieve both the cessation of domestic violence and supporting individuals' dignity.

### *A. Ending Domestic Violence*

The first goal for the legal system addressing the shared home when there is domestic violence should be to end domestic violence. Domestic violence continues to be a large social problem despite our

---

15. *See infra* Part I.C.1.

16. *See infra* Part II.B.3.

17. *See infra* Part II.D.3.



expansive legal systems' attempts to curb it. The National Coalition Against Domestic Violence reports that one in every four women will experience domestic violence in her lifetime.<sup>18</sup> An estimated 1.3 million women are victims of physical assault by an intimate partner each year.<sup>19</sup> The exercise of power and control is central to domestic violence.<sup>20</sup> That power and control may be exercised in many ways, including physical violence, emotional abuse, or isolation.<sup>21</sup> Researchers have identified that effective responses to domestic violence include those that support or restore a victim's right to "freedom, choice and autonomy."<sup>22</sup> When women can choose and control the options of how to address the domestic violence, women's agency is promoted and this promotion can help decrease the risk of re-assault.<sup>23</sup> Therefore, legal interventions like the CPO laws, which permit persons subjected to abuse to control their legal remedy by choosing how best to address the abuse, can have a positive impact on reducing domestic violence.<sup>24</sup> Similarly, the ability to stay at a domestic violence shelter can positively affect women's psychological health as well as decrease violence.<sup>25</sup>

Recently, the domestic violence justice system has focused less on the agency of women subjected to abuse and generating multiple

---

18. NAT'L COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 4.

19. *Costs of Intimate Partner Violence Against Women in the United States*, CTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJURY PREVENTION & CONTROL (March 2003), [http://www.cdc.gov/ncipc/pub-res/ipv\\_cost/IPVBook-Final-Feb18.pdf](http://www.cdc.gov/ncipc/pub-res/ipv_cost/IPVBook-Final-Feb18.pdf).

20. Johnson, *supra* note 4, at 1126 (citing Sarah M. Buel, *Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 OR. L. REV. 945, 958 (2004); Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743 (2005)).

21. *Id.* at 1115–24.

22. *Id.* at 1151 (citing Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much Is Too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 30 (2007)).

23. *Id.*

24. Janice Grau et al., *Restraining Orders for Battered Women: Issues of Access and Efficacy*, 4 WOMEN & POL. 13, 19, 21–25 (1984); Julia Henderson Gist et al., *Protection Orders and Assault Charges: Do Justice Interventions Reduce Violence Against Women?*, 15 AM. J. FAM. L. 59, 67 (2001); Johnson, *supra* note 4, at 1128; Carol E. Jordan, *Intimate Partner Violence and the Justice System*, 19 J. INTERPERSONAL VIOLENCE 1412, 1425 (2004); Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18 Month Study of 150 Black, Hispanic and White Women*, 94 AM. J. PUB. HEALTH 613, 617 (2000). *But see* Jordan, *supra* note 4, at 1425.

25. NAT'L RESEARCH COUNCIL, UNDERSTANDING VIOLENCE AGAINST WOMEN 104–07 (Nancy A. Crowell & Ann Wolbert Burgess eds., 1996) (discussing Tutty study of shelters).

options for them to address domestic violence and more on options increasing the criminal justice system responses to domestic violence focused on the state's conception of women's safety.<sup>26</sup> The legal system has focused on supporting a person once subjected to abuse after the person is in a non-abusive relationship or has left that relationship, but only for a limited time. As scholars have noted, there is "[v]irtually no attention . . . paid to a survivor's need to develop a support network beyond that available from short-term, system-based advocacy."<sup>27</sup> While separation of the two parties has been the main focus of achieving safety in the short-term—through mandatory arrests, no drop prosecutions, stay away and no vacate orders in civil protection orders, and the funding of shelters—the long-term approach to ending domestic violence and maintaining the end of domestic violence is less developed.

Moreover, the separation-as-safety focus has resulted in the isolation of women. Women subjected to abuse who move to shelters or alternative homes in an effort to be physically separated from their abusive partners end up separated from their communities, support networks, neighborhoods, employment, and children's schools. Few system provisions exist to support the woman who wishes to maintain her connection to her community.<sup>28</sup> And connection to community is "vital to virtually all victims' physical safety . . . and psychological recovery."<sup>29</sup> Accordingly, ending domestic violence in the long term, not just the short term, should be a goal of the legal system.

### *B. Supporting Dignity*

In addition to ending domestic violence, the legal system should uphold the dignity of the two parties in an abusive relationship who share a home. Here, I borrow the definition of "dignity" used in philosophy, political philosophy, and constitutional law. Dignity is

---

26. LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 106–35 (2012); Jane K. Stoever, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 305–06 (2011).

27. LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH AND JUSTICE 104 (2008).

28. *Id.* at 99.

29. *Id.*

the inherent nature that renders human beings capable of autonomous action and thought.<sup>30</sup> Dignity recognizes human beings as separate from the state in determining fundamental questions affecting the meaning of their lives. John Stuart Mill explained that dignity exists in human beings simply because they have the capacity to “explore the unknown and to share their discoveries.”<sup>31</sup> Similar to the Millian conception is the United Nations Universal Declaration of Human Rights and its preamble, which provide a “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family. . . .”<sup>32</sup> In U.S. constitutional law, the Supreme Court often discusses human dignity as related to personal autonomy or “the inviolability of persons from intrusions by the state.”<sup>33</sup> The concept of human dignity often is equated with each individual’s inherent worth.<sup>34</sup> And the Court often discusses dignity as essential to equality.<sup>35</sup> In American political culture, as Ronald Dworkin explains, there “is a belief in individual human dignity: that people have the moral right—and the moral responsibility—to confront for themselves, answering to their own conscience and conviction, the most fundamental questions touching the meaning and value of their own lives.”<sup>36</sup>

For human dignity, individuals must have both the opportunity and capacity to make these personal, fundamental decisions, but dignity is not contingent on whether individuals access the opportunity or how they exercise this capacity.<sup>37</sup> Martha Nussbaum

---

30. Margaret E. Johnson, *Balancing Liberty, Dignity and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 545 (2010).

31. RONALD BONTEKOE, *THE NATURE OF DIGNITY* 31 (2008) (comparing the Millian view of dignity to the Kantian which posits that dignity exists in human beings because they have the capacity to recognize and act upon objective and ethical truths).

32. Alan Gewirth, *Human Dignity as the Basis of Rights*, in *THE CONSTITUTION OF RIGHTS: HUMAN DIGNITY AND AMERICAN VALUES* 10, 12 (Michael J. Meyer & William A. Parent eds., 1992).

33. Judith Resnick & Julie Chi-hye Suk, *Adding Insult to Injury: Questioning the Role of Dignity in Conceptions of Sovereignty*, 55 STAN. L. REV. 1921, 1937 (2003).

34. Johnson, *supra* note 30, at 546 (citing Neomi Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 COLUM. J. EUR. L. 201, 215–18 (2008)).

35. *Id.* at 547; Neomi Rao, *Gender, Race, and Individual Dignity: Evaluating Justice Ginsburg’s Equality Jurisprudence*, 70 OHIO ST. L.J. 1053, 1059, 1080 (2009).

36. Ronald Dworkin, *Unenumerated Rights: Whether and How Roe Should be Overruled*, 59 U. CHI. L. REV. 381, 426 (1992).

37. Johnson, *supra* note 30, at 546–47 (citing Neomi Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 COLUM. J. EUR. L. 201, 215–18 (2008)).

argues that we should ground dignity, and measure our political and societal respect for it, not only in support of rationality but also of such capabilities as life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; respect for other species; play; and control over one's environment.<sup>38</sup> In considering how dignity relates to intimate partner violence almost all of these areas of capabilities emerge.

As discussed earlier, the legal system has robustly addressed ways for a woman subjected to abuse to separate from her abuser when they share a home. And these laws are critical both for women who want to leave the relationship but stay in the home, and for women who want to leave the relationship *and* the home. They address areas of capabilities such as bodily health and integrity, emotions, practical reason, affiliation and control over one's environment. But they are not comprehensive enough in addressing these capabilities. There are virtually no laws that support a decision to stay in the relationship and the home but end the violence. And the legal system has not properly addressed the dignity of persons who abuse their intimate partners, despite evidence that such consideration could decrease the violence. This paper argues for dignity to be a guiding value for a more comprehensive legal system that addresses the home in domestic violence situations.

### *C. Affirming the Importance of Home*

The third goal for the domestic violence legal system is affirming the importance of "home" because of its relationship to domestic violence. In addition, both property scholarship and domestic violence scholarship show the importance of home to a person's dignity.<sup>39</sup>

#### *1. Home and domestic violence*

There is a tight relationship between home and domestic violence. The common law castle doctrine states that "in his home, a

---

38. Martha Nussbaum, *Human Dignity and Political Entitlements*, in HUMAN DIGNITY AND BIOETHICS: ESSAYS COMMISSIONED BY THE PRESIDENT'S COUNCIL ON BIOETHICS (2008).

39. See, e.g., Lorna Fox, *Re-Possessing "Home": A Re-Analysis of Gender, Homeownership and Debtor Default for Feminist Legal Theory*, 14 WM. & MARY J. WOMEN & L. 423, 428 (2008).

man may forcefully defend himself, his family, and his property against harm by others.”<sup>40</sup> This doctrine permitted self-governance of the home separate from the state. Related to this doctrine, the home, historically, was “the castle” where the male head of household could govern the inhabitants as he saw fit.<sup>41</sup> As a result, if the head of the household inflicted physical or other forms of abuse in the home on his wife or children, the state was unable or unwilling to step in and enforce criminal laws.<sup>42</sup> For many years, there was a sense that the home is, or should be, an inviolable place even if violence was being perpetrated by one family member against another.<sup>43</sup>

Recognizing that domestic violence often occurs inside the family home and that women subjected to abuse should have the option to have a violence-free home, the early Battered Women’s Movement attempted to provide emergency, temporary homes by creating a network of private shelters.<sup>44</sup> In addition, mandatory criminal laws of arrest and prosecution were created, which gave the state mandates to interfere in the home and separate the abuser from the woman subjected to abuse through jailing or criminal stay away

---

40. JEANNIE SUK, AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY 56 (2009) (explaining that in property and criminal law, the “castle doctrine” has long regulated permissible behavior in response to home intrusion).

41. *Id.*; Fox, *supra* note 39, at 427.

42. Fox, *supra* note 39, at 437; Epstein, *supra* note 14, at 1850–51.

43. Such a sense was reinforced by *Lawrence v. Texas*, where the Supreme Court found criminal sodomy laws unconstitutional because people have a liberty interest in developing intimate relationships in the privacy of their home. *Lawrence v. Texas*, 539 U.S. 558 (2003). See also SUK, *supra* note 40, at 128–131. For further discussion of *Lawrence* and its support for dignity, see Johnson, *supra* note 30, at 550. At the same time, there are exceptions in property law to this view that the home is a castle and thus off-limits from the state. For instance, in a case that does not involve domestic violence but rather eminent domain, *Kelo v. City of New London*, the Supreme Court ruled that New London could properly take the plaintiffs’ homes through the powers of eminent domain because repurposing them for other private ownership that would create economic development and generate tax revenue was a “public use.” *Kelo v. City of New London*, 545 U.S. 469, 484 (2005). For a discussion of *Kelo* and its discussion of home, see SUK, *supra* note 40, at 89–96.

44. See generally SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT (1982). In Washington, D.C., a shelter stay typically lasts for twenty to thirty days. See SUPERIOR CT. OF THE DIST. OF COLUM., CRIME VICTIMS COMPENSATION PROGRAM, *available at* [http://www.dccourts.gov/internet/documents/CVCP\\_Brochure.pdf](http://www.dccourts.gov/internet/documents/CVCP_Brochure.pdf). This information is also based on my students’ clinical experiences in representing clients seeking civil protection orders and crisis shelter.

orders.<sup>45</sup> And the Battered Women’s Movement created civil protection order laws that permitted persons subjected to abuse to temporarily vacate the abuser from the shared home.<sup>46</sup> All of these interventions had the goal of immediate separation in the crisis and, through separation, a short-term reduction in the violence.

Despite these vacate laws and this network of shelters, there is a strong connection between domestic violence and homelessness. The National Law Center on Homelessness and Poverty reports that domestic violence is a leading cause of homelessness nationally.<sup>47</sup> One study in Massachusetts found that 92% of homeless women were survivors of physical or sexual assault at some point in their lives.<sup>48</sup> These statistics help us understand that short-term, crisis solutions for staying in the home or establishing a new home need to be matched with long-term solutions to help maintain the home and an abuse-free life. In addition, the short-term solutions also need to expand in quantity and flexibility to accommodate more persons subjected to abuse.

## *2. Dignity, home and property*

There is a strong connection between home and dignity. The connection begins with the historical relationship between dignity and property as seen in the legal institutions of slavery and coverture. Society’s lack of respect for the dignity of African Americans was demonstrated by the enacted slavery laws, transforming human beings into property until passage of the Thirteenth Amendment.<sup>49</sup>

45. GOODMARK *supra* note 26, at 107–13; G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women’s Movement*, 42 HOUS. L. REV. 237, 278–82 (2005) (analyzing mandatory interventions in the domestic violence legal system).

46. PETER FINN & SARA COLSON, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT (March 1990); *See infra* Part II.

47. *Program: Domestic Violence*, NAT’L LAW CTR. ON HOMELESSNESS AND POVERTY, <http://www.nlchp.org/program.cfm?prog=3> (last visited Feb. 23, 2013).

48. *Id.*

49. *See* Pamela D. Bridgewater, *Un/re/dis Covering Slave Breeding in Thirteenth Amendment Jurisprudence*, 7 WASH. & LEE RACE & ETHNIC ANC. L.J. 11, 13 (2001) (analyzing slave breeding); Cheryl I. Harris, *Finding Sojourner’s Truth: Race, Gender, and the Institution of Property*, 18 CARDOZO L. REV. 309, 313 (1996) (“The archetypes of the slave . . . were ideologies of womanhood that functioned not to simply describe reality, but to represent social relations in a way that legitimated and normalized racial and sexual domination.”).

Similarly, society's lack of respect for married women's dignity was demonstrated with the institution of coverture.<sup>50</sup> Prior to the mid-nineteenth century,<sup>51</sup> although married women could hold title to the property, coverture dictated that only their husbands could exercise ownership rights, like the right to transfer, over the home.<sup>52</sup> If the property was jointly owned by the spouses as tenants by the entirety, the husband exclusively controlled the property.<sup>53</sup> It took the passage of the Married Women's Property Acts and the enforcement of the U.S. Constitution's Fourteenth Amendment's Equal Protection Clause to change these formal strictures on the relationship of women and property.<sup>54</sup>

Even with these changes, dignity, property, and home are still interconnected.<sup>55</sup> This interconnectedness exists in laws that distribute property based on the family unit or children, rather than individuals. For example, following a divorce, use and possession of the home is based in large part on the presence of children, and their need to maintain their community, not on the parents' needs.<sup>56</sup> This

---

50. Felice Batlan, *Engendering Legal History*, 30 LAW & SOC. INQUIRY 823, 830 (2005); Ellen Dannin, *Marriage and Law Reform: Lessons from the Nineteenth-Century Michigan Married Women's Property Acts*, 20 TEX. J. WOMEN & L. 1, 4 (2010) ("By depriving women of the capacity to manage their property by the simple act of marriage, coverture deprived women of the status, livelihood, self-protection, and self-respect linked to property-holding."); Gwen Hoerr Jordan, *Agents of (Incremental) Change: From Myra Bradwell to Hillary Clinton*, 9 NEV. L.J. 580, 584, 590 (2009) (discussing how coverture rendered a married woman "civilly dead" and how it was similar to slavery).

51. See Dannin, *supra* note 50, at 3 (explaining how before the 19<sup>th</sup> century, a woman "lost control and, effectively, ownership of her personal and real property to a husband"); Jordan, *supra* note 50, at 590 (discussing how married women had no right to real or personal property pre-19<sup>th</sup> century).

52. Batlan, *supra* note 50, at 830; Dannin, *supra* note 50, at 4 ("Title to land remained in the wife, but the husband was entitled to manage or rent her land during the marriage and could retain any profits."); Fox, *supra* note 39, at 429-30.

53. *Sawada v. Endo*, 561 P.2d 1291, 1294 (Haw. 1977); *Johnson v. Leavitt*, 125 S.E. 490, 491 (N.C. 1924).

54. *Id.*; See also Dannin, *supra* note 50, at 5-7.

55. See generally Audrey McFarlane, *The Properties of Instability: Markets, Predation, Racialized Geography, and Property Law*, 2011 WIS. L. REV. 855 (2011).

56. See, e.g., MD. CODE ANN., FAM. LAW § 8-206(1) ("[T]o enable any child of the family to continue to live in the environment and community that are familiar to the child . . ."). See also MD. CODE ANN., FAM. LAW § 8-208(b)(1) (stating that the best interest of the child will be a factor in the determination); *Pitsenberger v. Pitsenberger*, 410 A.2d 1052, 1058 (Md. 1980) (explaining that the court's interests is to "ensure that when a marriage is dissolved, the interests of minor children in the family are given 'particular and favorable attention'"); *Laczkowski v. Laczkowski*, 496 A.2d 56, 62 (Pa. Sup. Ct. 1985)

lack of recognition of the parents' independent basis from their children for dignity echoes scholar Lorna Fox's conception that the individual woman often becomes invisible as a home owner or occupier even while the family is highly visible.<sup>57</sup>

While society has used property and home to devalue an individual's dignity, people have used their homes to support and foster their dignity. Scholar bell hooks argues that for women of color, the home serves as a situs for individual resistance and dignity. bell hooks shows that for black women, and disadvantaged people more generally, the home has provided a respite from outside societal pressure and racism and also a situs for personal development.<sup>58</sup> Historically, black women established their homes in resistance to white supremacy and domination.<sup>59</sup> This is because "[a]n effective means of white subjugation of black people globally has been the perpetual construction of economic and social structures that deprive many folks of the means to make homeplace."<sup>60</sup> Specifically, hooks states that "[b]lack women resisted by making homes where all black people could strive to be subjects, not objects, where we could be affirmed in our minds and hearts despite poverty, hardship, and deprivation, where we could restore to ourselves the dignity denied us on the outside in the public world."<sup>61</sup> hooks also argues that "houses belonged to women, were their special domain, not as property, but as places where all that truly mattered in life took place—the warmth and comfort of shelter, the feeding of our bodies, the nurturing of our souls. There we learned dignity, integrity of being; there we learned to have faith."<sup>62</sup> As seen in bell hooks' work, persons who are subjected to subordination outside of home find a place of freedom and dignity inside the home.

Similarly, Professor Margaret J. Radin's personhood theory argues that female home ownership can come not from the financial

---

(Divorce cases should yield to the "common law doctrine of *parens patriae*, the goal of which is to provide the child with a permanent home").

57. Fox, *supra* note 39, at 440, 452–53.

58. *Id.* at 445, 447 (citing bell hooks, *YEARNING: RACE, GENDER, AND CULTURAL POLITICS* 42 (1990)).

59. BELL HOOKS, *YEARNING: RACE, GENDER, AND CULTURAL POLITICS* 44 (1990).

60. *Id.* at 46.

61. *Id.* at 42.

62. *Id.* at 41–42.



connection or the family relationships but from the occupier's individual attachment to and relationship with the property.<sup>63</sup> As Radin states, the home "is the scene of one's history and future, one's life and growth. In other words, one embodies or constitutes oneself there. The home is affirmatively part of oneself—property for personhood—and not just the agreed-on locale for protection from outside interference."<sup>64</sup> Property rights that are related to personhood, Radin argues, should take precedence over property rights that are not personal.<sup>65</sup> Accordingly, Radin argues that there should be a prima facie case that the right to personhood property should be protected against the government or fungible, non-personal property claims.<sup>66</sup> And if without this prima facie case, "the claimants' opportunities to become fully developed persons in the context of our society would be destroyed or significantly lessened," the case would be strongest.<sup>67</sup> Radin's personhood theory supports legal recognition of the connection between property and dignity.

*D. Ending Domestic Violence, Supporting Dignity, and Affirming the Importance of Home*

The connection between the three goals of ending domestic violence, supporting dignity, and affirming the importance of home is underscored by a recent study of low-income Puerto Rican women subjected to abuse. In this study, the young women often entered intimate partner relationships not out of love but for an immediate need for housing as they left their abusive childhood homes.<sup>68</sup> But when those intimate relationships became abusive, "[h]ousing . . . became a valued resource and source of power when [they] wanted out of their abusive intimate relationships and into housing they controlled."<sup>69</sup> The women "transposed their housing dependencies from intimate partners to housing they control."<sup>70</sup> The study showed that these women found a source of power in their independent

---

63. Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 992 (1982).

64. *Id.*

65. *Id.* at 1013.

66. *Id.* at 1014–15.

67. *Id.*

68. Sherri Lawson Clark, et al., *Housing Dependence and Intimate Relationships in the Lives of Low-Income Puerto Rican Mothers*, 32 J. FAM. ISSUES 369 (2010).

69. *Id.* at 382.

70. *Id.* at 385.

housing and that, even when the home was shared with an intimate partner, the women maintained their control over the home by making their partners live in the shadows and not join in the lease.<sup>71</sup> The study also showed that “[m]others . . . interpreted housing as a valued resource in intimate partner relationships in divergent ways with independent housing being seen as a bargaining tool to maintain or initiate relationships as well as a refuge for terminating relationships that experienced conflict.”<sup>72</sup> As the study found, “[h]aving control over housing made it easier for [the women] to endure tenuous relationships.”<sup>73</sup> As can be seen in the study of Puerto Rican low-income women, the home is a determinative factor in ending violence. Women subjected to abuse may choose to control the relationship, or rearrange it in a way that the women maintain control and decrease their exposure to violence, by either living apart from the abuser or residing with him. And one’s home is a determinative factor in this rearrangement.

## II. THE CURRENT LEGAL SYSTEM

As the above discussion demonstrates, the goals of ending domestic violence, supporting each party’s dignity, and affirming the importance of home are critical for a legal system to properly address domestic violence when the parties live together. This Part will address the many laws that govern the use, possession, exclusion of and responsibility for the home when there is domestic violence. While some of the laws fit these goals, many of them do not and need reform.

### *A. Three Categories of Laws*

I divide the laws that address the home when there is domestic violence into three categories: (1) those that permit the person subjected to abuse to stay in the shared home and exclude the abuser; (2) those that permit the person subjected to abuse to leave the shared home and obtain a new home; and (3) those that permit the person subjected to abuse to stay in the shared home with their partner but ending the domestic violence.

---

71. *Id.* at 388.

72. *Id.* at 385.

73. *Id.* at 386.

First, there are several laws that permit a person subjected to abuse to stay in the shared home and exclude the abuser: (1) civil protective order (CPO) laws that permit a petitioner, the person subjected to abuse, to obtain an order that excludes the respondent, the person abusing the other, from the home; (2) rental laws that permit a person subjected to abuse to defend against eviction and bifurcate the leasehold when the landlord seeks to evict the co-tenant abuser and the co-tenant victim for the violence committed; and (3) rental laws that permit a person subjected to abuse to require their landlord to change the locks to keep out excluded abusers.

Second, there are also laws that permit those persons subjected to abuse to leave and identify a new home if they wish to do so: (1) CPO laws that permit courts to order respondent to provide to petitioner an alternative home (or the money for a new home); (2) rental laws that permit a person subjected to abuse to terminate her lease early so she can obtain a new home; and (3) anti-discrimination laws that protect a person subjected to abuse from discrimination in trying to obtain a new home (that may be rented or purchased) because she is a victim of domestic violence; and (4) laws funding domestic violence shelters and transitional housing.

Third, the CPO's remedy of a "no further abuse" order is the only civil law that specifically aids a person subjected to abuse who wants to end the violence but stay in the shared home with the person who caused the abuse.

### *B. Petitioner Chooses to Stay in Home and Exclude Respondent*

As discussed above, the first category of laws are those that permit a person subjected to abuse to stay in the shared home and exclude the abuser. Where they exist, these laws provide support for dignity and the option for an individual subjected to abuse to keep her home and address the domestic violence. Her ability to choose to maintain the home and exclude the person perpetrating the abuse from it, however, varies by jurisdiction.

#### *1. CPO's vacate provision, eviction defense and lock-change laws*

All fifty states and the District of Columbia have CPO statutes.<sup>74</sup> Protective orders can offer immediate, short-term, and longer-term

---

74. Johnson, *supra* note 4, at 1131; *see generally* Klein & Orloff, *supra* note 7.

relief.<sup>75</sup> The short-term relief is usually in the form of an emergency protective order (EPO)<sup>76</sup> or a temporary protective order (TPO)<sup>77</sup> and can be granted after an ex-parte hearing. An EPO might last until the next business day and a TPO might last until notice is provided to the respondent and both parties appear at the final protective order hearing. The longer-term relief is in the form of a final CPO. Some states' CPOs last only six months and others can be permanent.<sup>78</sup> In this Article, I conducted a fifty-one jurisdiction survey (all fifty states and the District of Columbia) in order to explore the real property allocation permitted under CPO statutes. The CPO real property reallocation orders are often called "vacate" orders as they provide the petitioner the right to vacate, or exclude, the respondent from petitioner's home during the length of the order.<sup>79</sup> How the respondent is excluded, which respondents may be excluded, and from what types of homes the respondent may be excluded varies greatly from jurisdiction to jurisdiction, as discussed below.

The second set of laws that permit the person subjected to abuse to stay in the home and exclude her abusive partner are those laws that permit a woman subjected to abuse to defend against a landlord's eviction claim. In most residential leases, tenants breach the lease if a crime is committed on the premises. When there is domestic violence, landlords often evict not only the abusive tenant for a breach of lease but also the victim of violence.<sup>80</sup> To remedy this unfair situation, eleven jurisdictions permit a tenant who is a victim

---

75. Johnson, *supra* note 4, at 1130.

76. *See, e.g.*, MD. CODE ANN., FAM. LAW § 4-504.1(a), (b) (West 2012) (authorizing court commissioner to issue an Interim Protective Order (Maryland's EPO equivalent) ex parte when court clerk's office is closed).

77. *See, e.g.*, MD. CODE ANN., FAM. LAW § 4-505(a) (West 2012) (authorizing court to issue a Temporary Protective Order ex parte).

78. *See* CONN. GEN. STAT. ANN. § 46b-15(d) (West 2012) (protective orders may last up to one year, and can be extended if court deems an extension necessary) and MD. CODE ANN., FAM. LAW § 4-506(k)(3) (West 2012) (permitting permanent EPO in certain circumstances). In Maryland, however, a permanent order may not include a vacate order. MD. CODE ANN., FAM. LAW § 4-506(k)(2) (West 2012).

79. *See e.g.* ALA. CODE § 30-5-7(b)(7) (West 2012) (permitting court to remove and exclude respondent from home) and MD. CODE ANN., FAM. LAW § 4-506(d)(4) (West 2012) (permitting court to vacate respondent from home under certain circumstances).

80. Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 AM. U.J. GENDER SOC. POL'Y & L. 377, 385 (2006).

of violence to defend against such an eviction.<sup>81</sup> Five states permit the lease to be bifurcated so that only the abusive person is evicted and a new lease is created with the remaining tenant, the woman subjected to abuse.<sup>82</sup> Similarly, under the Violence Against Women Act (VAWA), public housing agencies or Section 8 landlords cannot evict individuals or terminate their assistance based on incidents of actual or threatened domestic violence against them<sup>83</sup> or based on criminal activity directly relating to such violence,<sup>84</sup> unless the landlord demonstrates that the individual's continued tenancy would pose an "actual and imminent threat" to other persons on the property.<sup>85</sup> Section 8 landlords also are given the power to bifurcate a joint lease in order to evict the individual causing violence but retain the tenant who is the victim of domestic violence.<sup>86</sup> In addition, as with other VAWA housing provisions, landlords must provide individuals with notice of these VAWA rights.<sup>87</sup>

The third set of laws are the lock-change laws for renters. Ten states have laws that permit the tenant to change the locks on her apartment because of domestic violence and out of a concern that the abuser would have keys to old locks to the apartment.<sup>88</sup> This

---

81. COLO. REV. STAT. § 38-42-402 (2011); D.C. CODE § 42-3505.01 (LexisNexis 2012); IOWA CODE §§ 562A.27A, 562B.25A(3) (2012); LA. REV. STAT. ANN. § 40:506(D) (2012); MD. CODE ANN., REAL PROP. § 8-5A-05 (West 2012); MINN. STAT. § 504B.205 (2012); N.M. STAT. ANN. § 47-8-33(J) (LexisNexis 2012); OR. REV. STAT. § 90.449 (2011); VA. CODE ANN. § 55-248.31(D) (2012); WASH. REV. CODE ANN. § 59.18.580 (LexisNexis 2012); WIS. STAT. § 106.50 (2012); *See also* Anne C. Johnson, *From House to Home: Creating A Right to Early Lease Termination for Domestic Violence Victims*, 90 MINN. L. REV. 1859, 1882, 1885 (2006).

82. ARK. CODE ANN. § 18-16-112(c)(3)(A)-(B) (2009); IND. CODE ANN. § 32-31-9-14 (West 2007); N.Y. REAL PROP. LAW § 227-c(2)(C)(II)(B) (McKinney 2012); OR. REV. STAT. ANN. § 90.456 (West 2012); WIS. STAT. § 704.16-19 (2008); NAT'L LAW CTR., *THERE'S NO PLACE LIKE HOME: STATE LAWS THAT PROTECT HOUSING RIGHTS FOR SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE* (2012) *available at* [http://www.nlchp.org/Theres\\_No\\_Place\\_Like\\_Home](http://www.nlchp.org/Theres_No_Place_Like_Home).

83. 42 U.S.C. §§ 1437d(c)(5), 1437f(c)(9)(B) (2006).

84. 42 U.S.C. §§ 1437d(k)(6), 1437f(c)(9)(C)(i) (2006).

85. 42 U.S.C. §§ 1437d(c)(3), 1437d(c)(5), 1437d(l)(6), 1437f(c)(9)(B), 1437f(c)(9)(C)(i)-(ii) (2006).

86. 42 U.S.C. §§ 1437d(l)(6), 1437f(c)(9)(C)(ii) (2006).

87. 42 U.S.C. §§ 1437d(u)(2)(B), 1437f(ee)(2)(B) (2006).

88. ARIZ. REV. STAT. § 33-1318 (LexisNexis 2012); ARK. CODE ANN. § 18-16-112 (2009); D.C. CODE § 42-3505.08 (LexisNexis 2001); 765 ILL. COMP. STAT. ANN. 750 / 20 (West 2007); IND. CODE ANN. § 32-31-9-10 (West 2012); MD. CODE ANN., REAL PROP. § 8-5A-06 (West 2012); N.C. GEN. STAT. § 42-42.3 (2011); OR. REV. STAT. § 90.459 (2011);

provision provides extra security to a tenant who has vacated the respondent from the home. The state laws protect the landlords from possible claims of unlawful lock outs of the abusive tenant as well.

## 2. *Benefits*

These three sets of laws—CPO vacate provisions, eviction defense laws, and lock-change laws—provide a number of benefits to victims of abuse. In terms of the goal of ending domestic violence, the civil protection order’s vacate provision, when granted, does permit petitioner and respondent to be physically separated and thus creates a physical barrier to further physical abuse. This is also true of the lock-change provision, which requires landlords to change the locks to provide extra assurance that the respondent cannot re-enter the rented home. As stated above, research shows that when women choose the option of obtaining a CPO to address the domestic violence and successfully obtain one, their exposure to violence decreases.<sup>89</sup> As to the goal of maintaining a home, the eviction defense laws preclude the landlord from evicting the person subjected to abuse from her home while evicting the abuser. In addition, the laws providing for bifurcation of the lease permit a tenant to create a sole tenancy while the landlord evicts the abusive partner.

In terms of the value of dignity and the home, these laws permit the person subjected to abuse to stay in the shared home and create a place of development and expression of her individuality to support her dignity. She can stay in her community, which is where she is most likely connected to schools, employment, neighbors, and friends, and avoid the disruption of having to find a new place. In addition, if she chooses to end the relationship, the vacate order separating the parties respects her decision about rearranging her relationship with the respondent. And being able to stay in the shared home has the promise of keeping her from being homeless.

There are some advantages for the respondent as well. Seventeen jurisdictions recognize respondent’s property interests and limit the courts’ ability to vacate respondents if the home is solely-owned by

---

UTAH CODE ANN. § 57-22-5.1 (LexisNexis 2012); VA. CODE ANN. § 55-248.18:1 (2012); WASH. REV. CODE ANN. § 59.18.585 (LexisNexis 2012).

89. See *supra* notes 22-24 and accompanying text.

respondent. These jurisdictions often require that the respondent have a family obligation to the woman or their children in order for the court to vacate him from his solely-owned property.<sup>90</sup>

### 3. *Shortcomings*

Despite these benefits, there are many shortcomings both for the woman subjected to abuse and the perpetrator of the abuse.

First, a petitioner may be unable to persuade a court to order respondent to vacate the home. The research shows that courts grant vacate orders at a low rate. Thirty-four out of fifty-one jurisdictions permit the court to exclude the respondent and/or grant possession of the residence to the petitioner, regardless of the title to the home.<sup>91</sup> Yet courts' concerns over the breadth of this property rights redistribution remedy may result in their reluctance to grant it. Moreover, if a woman has fled the home initially but then seeks to return to the home through the protective order, the court may

---

90. ALA. CODE § 30-5-7(c)(4) (2012); GA. CODE ANN. §19-13-4(a) (West 2012); ME. REV. STAT. tit. 19-A, § 4007 (2011); MISS. CODE ANN. § 93-21-15 (2008); N.H. REV. STAT. ANN. § 173-B:4 (2012); OHIO REV. CODE ANN. § 3113.31 (West 2011); 23 PA. CONS. STAT. ANN. § 6108 (West 2012); S.C. CODE ANN. § 20-4-60 (2012); and TEX. FAM. CODE ANN. § 83.006 (West 2011). Married: KAN. STAT. ANN. § 60-3107 (West 2012); MD. CODE ANN., FAM. LAW § 4-506 (West 2012) (also cohabitant of at least 90 days in last year); MO. ANN. STAT. § 455.050 (West 2012); OR. REV. STAT. ANN. § 107.718 (West 2012); WIS. STAT. § 813.12(3) (2012) (or if not married, vacate for reasonable time only). Limited time: ARIZ. R. PROT. ORD. P., Rule 6 (Arizona 2012), WIS. STAT. § 813.12(3)(a)(2)(am)(2012); Marital Property: D.C. R. DOM. VIOLENCE, Rule 11 (2012). Duty to Support and Petitioner has custody of children: LA. REV. STAT. ANN. § 46:2136 (2012).

91. ALASKA STAT. § 18.66.100 (2012); ARK. CODE ANN. § 9-15-205 (2012); CAL. FAM. CODE § 6321 (West 2012); COLO. REV. STAT. § 18-1-1001 (2012); CONN. GEN. STAT. ANN. § 46b-15(c) (West 2012); DEL. CODE ANN. tit. 10, § 1045(a)(3) (West 2012); FLA. STAT. ANN. § 741.30 (West 2012); GA. CODE ANN. §19-13-4(a) (West 2012); HAW. REV. STAT. §§ 586-4(a)(3), 586-5.5 (West 2012); IDAHO CODE ANN. § 39-6306 (West 2012); 750 ILL. COMP. STAT. ANN. 60 / 214 (West 2012); IND. CODE ANN. § 34-26-5-9 (West 2012); IOWA CODE § 236.5 (2012); KY. REV. STAT. ANN. § 403.750 (West 2012); MASS. GEN. LAWS ANN. ch. 209A, § 3 (West 2012); MICH. COMP. LAWS ANN. § 600.2950 (West 2012); MINN. STAT. § 518B.01 (2012); MONT. CODE ANN. § 40-15-204 (2011); NEB. REV. STAT. § 42-924 (2012); NEV. REV. STAT. ANN. § 33.030 (West 2011); N.J. STAT. ANN. § 2C:25-29 (West 2012); N.M. STAT. ANN. § 40-13-5 (2012); N.Y. FAM. CT. LAW § 842 (McKinney 2012); N.C. GEN. STAT. § 50B-3 (2012); N.D. CENT. CODE ANN. § 14-07.1-08 (West 2011); OKLA. STAT. ANN. tit. 22, § 60.3 (West 2012); R.I. GEN. LAWS ANN. § 15-15-3 (West 2012); S.D. CODIFIED LAWS § 25-10-5 (2012); UTAH CODE ANN. § 78B-7-106 (West 2012); VT. STAT. ANN. tit. 15, § 1103 (West 2012); VA. CODE ANN. § 16.1-279.1 (2012); WASH. REV. CODE ANN. § 26.50.060 (LexisNexis 2012); W. VA. CODE ANN. § 48-27-403 (West 2012); and WYO. STAT. ANN. § 35-21-105 (2012).

refuse to vacate the respondent who had stayed in the home.<sup>92</sup> In a recent study of 80 plaintiffs who requested respondents vacate the residence, the judges granted the request only six percent of the time.<sup>93</sup> An earlier study showed that instead of vacating the respondent, judges told over seventy percent of petitioners to leave the home.<sup>94</sup> In another earlier study of 175 cases in Kentucky, three judges granted orders to vacate 25% of the time.<sup>95</sup> And another multi-state study showed that 32.4% of protection orders granted a permanent order to vacate the residence.<sup>96</sup> These studies show that in many jurisdictions, a petitioner cannot rely on the court to issue a vacate order.

The defense of eviction and lock-change laws are also a limited option for women subjected to abuse because the vast majority of jurisdictions do not have these laws. Only eleven jurisdictions have eviction defense and lock-change laws to protect private tenants.<sup>97</sup> Therefore, women subjected to abuse

92. See email on file with author (petitioner counsel stating that this issue has risen multiple times in his jurisdiction). *But see* Swenson v. Swenson, 490 N.W.2d 668, 670 (Minn. Ct. App. 1992) (reversing court's refusal to vacate abuser from home). Also, a few jurisdictions' laws specifically permit a petitioner to vacate a respondent even if the petitioner has left the home because of the abuse. S.D. CODIFIED LAWS § 25-10-9 (2012); TENN. CODE ANN. § 36-3-613 (West 2012); VA. CODE ANN. § 16.1-253.4(F) (2012).

93. Valli Kalei Kanuha & Martha L. Ross, *The Use of Temporary Restraining Orders (TROs) as a Strategy to Address Intimate Partner Violence*, 19 VIOLENCE & VICTIMS 343, 349 (2004).

94. 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, 195-96 (1993). It is important to note that this study and others from the 1990s represent court decisions that pre-date more recent efforts to educate judges regarding the dynamics of domestic violence.

95. Janet Ford et al., *Case Outcomes in Domestic Violence Court: Influence of Judges*, 77 PSYCHOL. REP. 587, 590-92 (1995).

96. SUSAN L. KEILITZ, PAULA L. HANNAFORD & HILLERY S. EFKEMAN, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE 65 (1997). The authors also note that the District of Columbia and Denver were more likely to grant such relief. *Id.* at 13, 29.

97. The eviction defense statutes are the following: COLO. REV. STAT. § 38-12-402 (2011); D.C. CODE § 42-3505.01 (LexisNexis 2013); IOWA CODE §§ 562A.27A, 562B.25A(3) (2012); LA. REV. STAT. ANN. § 40:506(D) (2013); MD. CODE ANN., REAL PROP. § 8-5A-05 (2013); MINN. STAT. § 504B.205 (2012); N.M. STAT. ANN. § 47-8-33(J) (2012); OR. REV. STAT. § 90.449 (2011); VA. CODE ANN. § 55-248.31(D) (2013); WASH. REV. CODE § 59.18.580 (2013); WIS. STAT. § 106.50 (2012). The states with bifurcation laws are Arkansas, Indiana, New York, Oregon and Wisconsin.

The lock-change laws are the following: ARIZ. REV. STAT. ANN. § 33-1318 (2007); ARK. CODE ANN. § 18-16-112 (2012); D.C. CODE § 42-3505.08 (LexisNexis 2013); 765 ILL.



may also lose their apartments once rented, due to lease termination provisions that are triggered when violence or crimes occur on the premises. Moreover, landlords may attempt to evict women subjected to abuse along with the violent party in order to avoid creating a new lease with only the woman's name, especially if she suffers from credit and financial issues.<sup>98</sup> Public housing tenants and tenants using Section 8 vouchers are provided eviction protection under the Violence Against Women Act (VAWA).<sup>99</sup>

For private tenants subjected to domestic violence, some states require landlords to change the locks if requested by the tenants. However, the tenants are required to bear the cost of the lock-change.<sup>100</sup> Whether or not the landlords are required to change the locks, only eighteen jurisdictions explicitly provide tenants' reimbursement for the lock-change under their crime victims' compensation funds.<sup>101</sup>

---

COMP. STAT. 750 / 20 (2007); IND. CODE § 32-31-9-10 (2012); MD. CODE ANN., Real Prop. § 8-5A-06 (West 2012); N.C. GEN. STAT. § 42-42.3 (2013); OR. REV. STAT. § 90.459 (2011); UTAH CODE ANN. § 57-22-5.1 (LexisNexis 2013); VA. CODE ANN. § 55-248.18:1 (2013); WASH. REV. CODE § 59.18.585 (2004).

98. Lapidus, *supra* note 80, at 385.

99. 42 U.S.C. §§ 1437f(c)(9)(B), (d)(1)(B), (o)(7)(C), (o)(20) (2006) (these provisions offer protection from eviction). *Id.* §§ 1437d(1)(6)(B), f(o)(7)(D) (these laws offer bifurcation of the lease).

100. ARIZ. REV. STAT. ANN. § 33-1318 (2007); ARK. CODE ANN. § 18-16-112 (2012); D.C. CODE § 42-3505.08 (LexisNexis 2013); N.C. GEN. STAT. § 42-42.3 (2013); OR. REV. STAT. § 90.459 (2011); UTAH CODE ANN. § 57-22-5.1 (LexisNexis 2013); WASH. REV. CODE § 59.18.585 (2012). Some states explicitly allow landlords to charge fees. 765 ILL. COMP. STAT. 750 / 20 (2007); MD. CODE ANN., Real Prop. § 8-5A-06 (West 2010); VA. CODE ANN. § 55-248.18:1 (2013).

101. ALASKA STAT. § 18.67.010 (2012); ARK. CODE ANN. § 16-90-706 (2012); COLO. REV. STAT. § 24-4.1-101 (2013); DEL. CODE ANN. tit. 11, § 9006 (2013); D.C. CODE § 4-507 (2013); 740 ILL. COMP. STAT. § 45 / 10.1 (2013); IOWA CODE § 915.86 (2011); MASS. GEN. LAWS ch. 258C, § 3 (2012); MINN. STAT. § 611A.57 (1993); MISS. CODE ANN. § 99-41-5 (2013); NEV. REV. STAT. § 217.090 (1991); N.J. STAT. ANN. § 52:4B-9 (West 2007); N.C. GEN. STAT. § 15B-7 (2013); UTAH CODE ANN. § 63M-7-511 (West 2013); VT. STAT. tit. 13, § 5356 (2008); VA. CODE ANN. § 19.2-368.11:1 (2013). *See also Compensation*, ALASKA DEP'T OF ADMIN., <http://doa.alaska.gov/vccb/Victims/compensation.html> (last visited Nov. 7, 2013); *Crime Victim Compensation Program*, DENVER DIST. ATTORNEY'S OFFICE, [http://www.denverda.org/DA\\_Programs/victim\\_info/victim\\_compensation.htm](http://www.denverda.org/DA_Programs/victim_info/victim_compensation.htm) (last visited Nov. 7, 2013); *Compensation Program*, DEL. VICTIMS' COMP. ASSISTANCE PROGRAM, <http://attorneygeneral.delaware.gov/VCAP/compensation.htm> (last visited Nov. 7, 2013); *Crime Victim Compensation: Frequently Asked Questions*, OFFICE OF THE ILL. ATTORNEY GEN., [http://www.ag.state.il.us/victims/CV\\_FAQ\\_0113.pdf](http://www.ag.state.il.us/victims/CV_FAQ_0113.pdf) (last visited Nov. 7, 2013); *Emergency Fund*, MINN. DEP'T OF PUB. SAFETY, <https://dps.mn.gov/divisions/ojp/help-for-crime-victims/Pages/emergency-fund.aspx> (last

Another shortcoming of CPO vacate laws is that even if a petitioner can get a CPO against the respondent that limits respondent's access to the home, many of the laws do not permit the court to deprive respondent of all of his property rights during the life of the CPO.<sup>102</sup> The respondent may use his remaining rights in the property to continue to use the home to abuse petitioner. Some states provide for the respondent to be excluded or vacated from the home, thereby removing the respondent's possessory interests, but do not explicitly provide for the court to order him to stay away from the home.<sup>103</sup> Some jurisdictions only permit the court to order respondent to stay away from the home and do not also allow the court to remove his right to possession or even require that he vacate himself and his belongings.<sup>104</sup> The problem with these inconsistencies is that it is possible that the laws would still permit respondent access to the home, or at least the ability to use the home, to perpetrate some abuse of and control over petitioner. Either result would not further the goal of ending domestic violence through the woman's control of her home. For example, if the law does not provide petitioner with exclusive possession of the home, respondent will maintain the possessory rights he had prior to the CPO. If he was ordered to stay away only and there was no grant of exclusive possession to petitioner, while respondent could not enter the premises and take possession due to

---

visited Nov. 7, 2013); *Application for Victim of Crime Compensation*, STATE OF NEV. VICTIMS OF CRIME PROGRAM, [http://voc.nv.gov/uploadedFiles/vocnvgov/content/VOC/VOCP\\_Application-English.pdf](http://voc.nv.gov/uploadedFiles/vocnvgov/content/VOC/VOCP_Application-English.pdf) (last visited Nov. 7, 2013); *Benefits in a Nutshell*, N.J. OFFICE OF ATTORNEY GEN., <http://www.nj.gov/oag/njvictims/benefits.html> (last visited Nov. 7, 2013); *How much can be paid?*, N.C. DEP'T OF PUB. SAFETY, <https://www.nccrimecontrol.org/Index2.cfm?a=000003,002144,000016,000162,000166> (last visited Nov. 7, 2013); SUPERIOR COURT OF THE D.C., *supra* note 44; *Are You a Victim of a Crime*, UTAH OFFICE FOR VICTIMS OF CRIME, [http://www.crimevictim.state.ut.us/Documents/Crime%20Victim%20Information/CrimeVictimBrochure\\_2011.pdf](http://www.crimevictim.state.ut.us/Documents/Crime%20Victim%20Information/CrimeVictimBrochure_2011.pdf) (last visited Nov. 7, 2013).

102. *See infra* notes 103–04.

103. *E.g.*, ARK. CODE ANN. § 9–15–205 (2012); COLO. REV. STAT. § 18–1–1001 (2013); FLA. STAT. § 741.30 (2012); KAN. STAT. ANN. § 60–3107 (2012); MASS. GEN. LAWS ch. 209A, § 3 (2012); N.C. GEN. STAT. § 50B–3 (2013); N.D. CENT. CODE § 14–07.1-02 (2013); 23 PA. CONS. STAT. § 6108 (2012); R.I. GEN. LAWS § 15–15–3 (2013); S.D. CODIFIED LAWS § 25–10–5 (2013); TENN. CODE ANN. § 36–3–606 (2013).

104. *See, e.g.*, COLO. REV. STAT. § 18–1–1001 (2013); HAW. REV. STAT. §§ 586–4(a)(3), –5.5 (2012); KY. REV. STAT. ANN. § 403.750 (West 2013); MICH. COMP. LAWS § 600.2950 (2012); MO. REV. STAT. § 455.050 (2012); N.Y. FAM. CT. ACT § 842 (McKinney 2013); W. VA. CODE § 48–27–503 (2012); WIS. STAT. § 813.12(4)(a) (2012).

the stay away, he could transfer his possessory rights to another.<sup>105</sup> With his possessory rights, respondent could continue his exercise of power and control by creating an involuntary roommate for the woman.

The third disadvantage is that states do not offer adequate options for a woman to economically maintain the shared home if she chooses to exclude her abuser. Only New Jersey and Missouri provide specifically for respondent to pay his share of the rent or the mortgage for the home once he is vacated.<sup>106</sup> It is possible that courts could order respondent to pay rent, the mortgage, or other household expenses under a “catch-all” remedy, but such a remedy is not available in every jurisdiction.<sup>107</sup> In addition, only two states restrain the respondent from cancelling utilities during the life of the CPO,<sup>108</sup> and only three jurisdictions preclude the parties from transferring, encumbering, or disposing of the home during the life of the CPO.<sup>109</sup> Accordingly, if a woman is able to successfully vacate the respondent, in most cases, petitioner is left to pay for the mortgage, rent, and the household expenses with only her one income, if she even has that, and this may make the living situation untenable for her.

Yet, even if petitioner is awarded the vacate order, awarded the lock-change, and/or defended against eviction, physically excluding respondent from the home is not always the solution to ending the domestic violence. In fact, the separation itself can increase the violence.<sup>110</sup> Research has shown that for certain women, separation may heighten the violence.<sup>111</sup> For instance, one study showed that “wives are much more likely to be slain by their husbands when

---

105. This situation happened in a recent Georgetown University Law Center clinic case. It should be noted that in a few jurisdictions, the law specifically permits the court to order respondent not to transfer the property. *E.g.*, S.C. CODE ANN. § 20-4-60 (2012); TEX. FAM. CODE ANN. § 83.006 (West 2013); W. VA. CODE § 48-27-403 (2012); WYO. STAT. ANN. § 35-21-105 (2013).

106. N.J. STAT. ANN. § 2C:25-29 (West 2013); MO. REV. STAT. § 455.050 (2012).

107. Klein & Orloff, *supra* note 7, at 912.

108. KAN. STAT. ANN. § 60-3107 (2012); VA. CODE ANN. § 16.1-279.1 (2013).

109. S.C. CODE ANN. § 20-4-60 (2012); TEX. FAM. CODE ANN. § 83.006 (West 2013); W. VA. CODE § 48-27-403 (2012); WYO. STAT. ANN. § 35-21-105 (2013).

110. Johnson, *supra* note 4, at 1127-28 (citing LENORE E. A. WALKER, ABUSED WOMEN AND SURVIVOR THERAPY: A PRACTICAL GUIDE FOR THE PSYCHOTHERAPIST 55 (1994)).

111. GOODMAN & EPSTEIN, *supra* note 27, at 97-98.

separated from them than when co-residing.”<sup>112</sup> Options beyond physical separation need to be created to more thoroughly address the societal epidemic of domestic violence.<sup>113</sup>

For the respondents, the CPO vacate provision, eviction defense, and lock-change laws have many shortcomings as well. Several shortcomings reflect the dissonance between vacate orders and property law. These CPO vacate provisions and lock-change laws infringe upon a respondent’s property rights. And because a respondent can be vacated from his solely-owned property in thirty-four jurisdictions, even if not married to the petitioner, the law may seem unjust from the perspective of the property holder.

In fact, as discussed in more detail below, this seeming injustice can also negatively impact petitioners as well, as it can reduce the chance that respondent will comply with the CPO. In addition, legislators have shown reluctance to expand relief under civil protection orders because of their perception that vacate provisions are unjust.<sup>114</sup>

Previously, respondents have been unsuccessful in arguing that the vacate orders are an unconstitutional taking without just compensation.<sup>115</sup> Because the vacate order does not disturb the respondent’s title and is temporary in nature, courts have, to date, found the vacate order constitutional.<sup>116</sup> As discussed earlier, thirty-four jurisdictions permit the petitioner to exclude the respondent in some manner from the home even if the petitioner is not on the

---

112. Marisa Silenzi Cianciarulo & Claudia David, *Pulling the Trigger: Separation Violence as a Basis for Refugee Protection for Battered Women*, 59 AM. U. L. REV. 337, 349 (2009) (citing Margo Wilson & Martin Daly, *Spousal Homicide Risk and Estrangement*, 8 VIOLENCE & VICTIMS 3, 8 (1993)).

113. *Id.* at 348–49. In the United States, more than three women a day are murdered by an intimate partner, and nearly one in four women will experience violence by a partner in her life. See *Get the Facts: The Facts on Domestic, Dating and Sexual Violence*, FUTURES WITHOUT VIOLENCE, [www.futureswithoutviolence.org/content/action\\_center/detail/754](http://www.futureswithoutviolence.org/content/action_center/detail/754) (last visited Nov. 7, 2013); *Domestic Violence: Statistics and Facts*, SAFE HORIZON, <http://www.safehorizon.org/index/what-we-do-2/domestic-violence-abuse-53/domestic-violence-the-facts-195.html> (last visited Nov. 7, 2013).

114. This is based on the author’s own personal observations of legislative hearings on CPO laws.

115. U.S. CONST. amend. V (“No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation”); U.S. CONST. amend. XIV, §1 (applicable to states).

116. See *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 236 (Mo. 1982); *Boyle v. Boyle*, 12 Pa. D. & C. 3d 767, 773 (Pa. Super. Ct. 1979).

deed or lease.<sup>117</sup> This means that respondent could lose the right to possess, occupy, include, or exclude persons from the home during the period he is vacated without any compensation. While it remains true that most jurisdictions' CPO vacate provisions last for a limited time, it is also true that in some jurisdictions the CPO is longer. For instance, in New Jersey the CPO permits courts to enter permanent orders of exclusive possession to the plaintiff, regardless of ownership interests in the home.<sup>118</sup> Although the New Jersey statute also makes clear, as do twelve other jurisdictions, that the CPO has no effect on the title to the home, a permanent CPO with exclusive possession granted to plaintiff means respondent cannot exercise many of the rights of property ownership for the life of the CPO, which may be equal to petitioner's life. Therefore, petitioner could exclusively possess the respondent's home for the petitioner's life. Because permanent CPOs have not been challenged under the due process arguments made to short-term TPO and CPO laws, it is a question of whether such permanent deprivation of many of the indicia of property ownership would no longer constitute a taking.<sup>119</sup>

The laws in the other seventeen jurisdictions permit a vacate order when respondent is the sole owner only under circumstances where respondent is in a familial relationship with petitioner, such as a spouse or parent of a child-in-common. Those laws seem less unjust to respondent because they fit into the existing legal landscape of marital property and family law's duty of spousal or child support.<sup>120</sup>

---

117. *See supra* note 91.

118. N.J. STAT. ANN. § 2C:25-29 (West 2013).

119. *See* Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 441 (1982) (finding a taking, requiring just compensation, when a permanent physical occupation of an owner's property is authorized by the government).

120. *See* JOSEPH WILLIAM SINGER, INTRODUCTION TO PROPERTY 375 (2001); KATHARINE K. BAKER & KATHARINE B. SILBAUGH, FAMILY LAW: THE ESSENTIALS 91 (2009); RANDY FRANCES KANDEL, FAMILY LAW: ESSENTIAL TERMS AND CONCEPTS 38 (2000). In addition to the duty of support, each spouse owes the other a duty of services as well. *Id.* *See also* Judd v. Meszaroz, 2011 WL 4489049, at \*7-8 (Ohio Ct. App. Sept. 29, 2011) (explaining that the statute has restrictions on vacating property, such that it can only be granted if the respondent has a duty to support the petitioner or other household members, and that the ruling does not impact title); Katsenelenbogen v. Katsenelenbogen, 775 A.2d 1249, 1257-58 (Md. 2001) (explaining that to grant a vacate order, judges must consider "factors set forth in § 4-506(e)," which provides "a certain balance" between "protection of persons who have been subjected to abuse" and "plac[ing] some limits on the right to the relief allowed").

A second shortcoming of vacate laws for respondents is they do not fit well with common law property principles of co-ownership. In property law, when there are co-owners, they have an equal right to possess the property.<sup>121</sup> If one co-owner excludes the other co-owner, she could commit an ouster that would require the possessing co-owner to pay rent to the out-of-possession co-owner.<sup>122</sup> If there is an ouster, the occupying co-owner owes rent to the excluded co-owner.<sup>123</sup> Ouster law anticipates only back rent or re-entry and possession of the ousted party as the remedy.<sup>124</sup> Ouster law does not recognize excluding from possession the ousting party. Under the vacate laws, the petitioner has a court order effectively ousting the respondent, but the order does not alter respondents' rent or mortgage obligations, and the order does not require petitioner to pay respondent back rent.

A third shortcoming of vacate laws is that courts can grant a mere cohabitant—someone without a legal, familial relationship to the respondent—a vacate order against a respondent. For example, in Maryland, if the petitioner has been cohabitating with the respondent in his solely-owned home for at least ninety days, she can vacate respondent from his home through the CPO.<sup>125</sup> This is starkly different from property law, which in general does not recognize property rights of possession, use, or inclusion for cohabitating, unmarried non-titled possessors of property. An exception is that in a few jurisdictions, when a long-standing couple shares a home owned by one of them where the title-holder had promised to convey joint

---

121. SINGER, *supra* note 120, at 348; *see generally* Gabay v. Bender, 823 N.Y.S.2d 389, 390 (N.Y. App. Div. 2006) (“Any co-owner of real property has the right to enter upon the common estate and take possession of the whole thereof, subject only to the equal right of co-owners in interest with whose possession he or she may not interfere.”); Pettus v. Atchafalaya Wildlife Protective Soc’y., 351 So. 2d 790, 793 (La. Ct. App. 1977) (“The right of a co-owner to use and possess property held in common is equal to that of other co-owners.”).

122. SINGER, *supra* note 120, at 351. As explained by Singer, “An ouster can be accomplished only by such conduct as is sufficient both to exclude the non-occupying tenant(s) and to communicate to them an intent to do so. Mere occupation of property by one of several owners is not sufficient to communicate an intent to oust the others.” *Id.* It is important to note that certain states codified laws that prohibited one spouse ousting another spouse. *See* SUK, *supra* note 40, at 21–25.

123. SINGER, *supra* note 120.

124. *Id.*

125. MD. CODE ANN., FAM. LAW §§ 4–501(d)–(m) (LexisNexis 2013).

title, but had not, the non-owner does acquire an ownership interests in the home at the end of the relationship.<sup>126</sup>

As a result of dissonance between property and vacate laws, respondents and courts, among others, often view the civil protective order legal system as lacking fairness when it permits respondent to be vacated from his home that is solely-owned and non-marital property. The *Bisnath* case cited at the beginning of this Article demonstrates this principle. There, the court found that respondent had abused petitioner and granted all of the relief in the petition except the request for a vacate order. The court stated, “Where is he going to live?”<sup>127</sup>

As Professor Deborah Epstein has explained, the social psychology of authority shows that “[t]he likelihood of a person’s compliance with . . . court orders . . . is at least as firmly rooted in his perception of fair process as in his satisfaction with the ultimate result.”<sup>128</sup> According to Epstein, a fair system “enhances a person’s sense that authorities are moral and legitimate. This perception facilitates a person’s sense of self-worth and, in turn, his degree of compliance, even when this conflicts with immediate self-interest.”<sup>129</sup> Criminological theory about dignity supports this procedural justice theory. Specifically, Epstein cites that “John Braithwaite’s shaming theory holds that sanctions imposed in a manner that harms a person’s dignity may result in an increase in future offending. Conversely, sanctions imposed in a respectful manner that honors human dignity may increase compliance with authority.”<sup>130</sup>

Under Professor Tom Tyler’s theory of procedural justice, there are four factors that contribute to judgments that a process, such as a court proceeding, is fair: (1) “opportunities for participation

---

126. *Marvin v. Marvin*, 557 P.2d 106, 111 (Cal. 1976); *W. States Constr., Inc. v. Michoff*, 840 P.2d 1220, 1222 (Nev. 1992); *Kozlowski v. Kozlowski*, 403 A.2d 902, 906 (N.J. 1979) (citing positively to *Marvin*); *McKechnie v. Berg*, 667 N.W.2d 628, 631–33 (N.D. 2003); *see also Sullivan v. Rooney*, 533 N.E.2d 1372, 1373–74 (Mass. 1989) (creating a constructive trust in order to avoid unjust enrichment to the promisor); *Porter v. Zuromski*, 6 A.3d 372 (Md. Ct. Spec. App. 2010) (distributing cohabiters’ property based on unjust enrichment).

127. Jennifer McMenamin, *Judge’s Action Question Again*, BALTIMORE SUN (Oct. 22, 2008), [http://articles.baltimoresun.com/2008-10-22/news/0810210094\\_1\\_domestic-violence-judge-lamdin](http://articles.baltimoresun.com/2008-10-22/news/0810210094_1_domestic-violence-judge-lamdin).

128. Epstein, *supra* note 14, at 1846.

129. *Id.*

130. *Id.* at 1877.

(voice),” (2) “the neutrality of the forum,” (3) “the trustworthiness of the authorities,” and (4) “the degree to which people receive treatment with dignity and respect.”<sup>131</sup> A study of police interactions with men who had committed domestic violence found that if they felt they were fairly treated during their interaction with the police the men complied with the law in the future. The study also found that perceptions of fairness were more important for future compliance than any police punishment (such as arrest or fines).<sup>132</sup>

A respondent may view the CPO legal system as lacking fairness when it permits him to be vacated from his home that is solely-owned, non-marital property. In those jurisdictions where the court provides no opportunity to explain one’s attachment to the home, whether one has alternative living arrangements if vacated from the home, or other important and relevant facts, the court does not provide respondent a voice in shaping the outcome of the vacate order, and the respondent could perceive that he is not being treated with dignity and respect. As a result, a respondent may feel that the process is not fair and he will not comply with the resulting order. The value of ending domestic violence may be undermined by respondents’ noncompliance in the long-term.

A fourth shortcoming is that if a vacate order is granted, the respondents are left looking for a new home. And yet there are no shelters for men who abuse in the United States. Interestingly, there is a shelter for abusive men in Israel called Beit Noam.<sup>133</sup> It is a live-in treatment center for abusive men that has good results in reducing future violence.<sup>134</sup> Beit Noam boasts a zero recidivist rate of domestic abuse, as compared to the twenty-five percent rate for batterer intervention programs in the United States, none of which may be properly classified as shelters.<sup>135</sup>

---

131. Tom R. Tyler, *Procedural Justice*, in THE BLACKWELL COMPANION TO LAW AND SOCIETY 435, 445 (Austin Sarat ed., 2004).

132. *Id.* at 440 (citing Paternoster, Brame, Bachman, and Sherman, 1997).

133. Lora Bex Lempert, *Shelters: For Abused Women, or Abusive Men? As Aids to Survival, or as Rehabilitation Sites?*, 57 AGENDA 89, 98 (2003); Ophra Keynan et al., *Beit Noam: Residential Program for Violent Men*, 7 J. AGGRESSION, MALTREATMENT & TRAUMA 207, 208–09 (2003).

134. Lempert, *supra* note 128, at 98; Keynan et al., *supra* note 128, at 234 (showing reductions in physical violence in short-term but needing long-range study to determine effectiveness in long-term).

135. Lempert, *supra* note 128, at 98; Keynan et al., *supra* note 128, at 233. *See also* Eric S. Makowski et al., *Collateral Damage: An Analysis of the Achievements and Unintended*



Due to this lack of shelters for men who abuse, a perpetrator of domestic violence may be separated from the person whom he had abused, but his now-unstable living situation may nonetheless negatively affect his former partner and any children. He may be reliant on his community to support his new home or he may be forced to rely on the homeless shelter system, which is underfunded and under-resourced.<sup>136</sup> If the couple has children in common, the lack of a more permanent home may make it difficult for the father to maintain his involvement in the children's life, through custody or visitation.<sup>137</sup> The lack of a home also may create obstacles to maintaining employment, which in turn may affect financial support of the children and maintenance of the shared home and household expenses.<sup>138</sup>

A potential disadvantage of the eviction defense laws for persons who perpetrate domestic abuse is that those laws often do not permit a bifurcation of the lease, in which the evicted perpetrator would be

---

*Consequences of Batterer Intervention Programs and Discourse*, 17 J. FAM. VIOLENCE 167 (2002).

136. See Holly S. Schindler & Rebekah L. Coley, *A Qualitative Study of Homeless Fathers: Exploring Parenting and Gender Role Transitions*, 56 FAM. REL. 40, 41, 48-49 (2007) (explaining various strains that homeless fathers face).

137. See Rebecca Licavoli Adams, *California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?*, 9 HASTINGS RACE & POVERTY L. J. 1, 15, 22 (2012) (explaining that "financial abuse is a common type of domestic violence so victims may also have trouble securing housing," and even when housing is secured, women and children may be evicted when the father shows up for visitation); Shirley Darby Howell, *Domestic Violence, Flawed Interpretations of 42 U.S.C. § 1437(d)(1)(6), Sexual Harassment in Public Housing, and Municipal Violations of the Eighth Amendment: Making Women Homeless and Keeping Them Homeless*, 13 T.G. JONES L. REV. 1, 3-5 (2008) (explaining that at least "fifty percent of homeless women became homeless as a direct result of domestic abuse," many of whom have children and now live on the streets).

138. Anne R. Roschelle, *Welfare Indignities: Homeless Women, Domestic Violence, and Welfare Reform in San Francisco*, 25 GENDER ISSUES 193, 194, 202 (2008) (explaining that abusive men "sabotage women's training and employment responsibilities;" barriers to employment are exacerbated by the exigencies of homelessness, especially for "homeless women who are also victims of domestic violence" for whom "barriers can become insurmountable"); Stephanie Riger, Sheela Raja & Jennifer Camacho, *The Radiating Impact of Intimate Partner Violence*, 17 J. INTERPERSONAL VIOLENCE 184, 200 (2002) ("Women with children who do not have family support or access to affordable child care may find it particularly difficult to establish themselves financially and vocationally."); Pamela H. Zappardino & Deborah DeBare, *In Search of Safety: Double Jeopardy for Battered Women*, 8 NEW ENG. J. OF PUB. POL., 753, 757 (1992) ("Child custody issues inevitably complicate the situation for a battered woman who has left her home.").

removed from the lease and attendant obligations.<sup>139</sup> If the lease is not bifurcated, but the perpetrator of abuse is evicted from the rented home while the victim of the abuse remains, the perpetrator may continue to be liable for any default by the possessing victim, such as rent or damage to the property.

### *C. Petitioner Chooses to Leave Home and Respondent Stays in Home*

There are four sets of laws addressing the scenario in which a woman subjected to abuse chooses to leave the shared home to look for a new home, while the respondent remains.

#### *1. CPO alternative housing provision, early lease termination, anti-discrimination, and shelter and transitional housing funding laws*

Under certain CPO laws, the court may order a respondent to provide petitioner with new housing as an alternative to staying in the shared home.<sup>140</sup> In addition, certain rental laws permit persons subjected to abuse to terminate their lease early without penalty to allow them to move away from their abuser.<sup>141</sup> Anti-discrimination laws protect domestic violence victims who are seeking to rent an apartment or purchase a home with a mortgage.<sup>142</sup> And finally,

139. See NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, THERE'S NO PLACE LIKE HOME: STATE LAWS THAT PROTECT HOUSING RIGHTS FOR SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE 33, [http://www.nlchp.org/Theres\\_No\\_Place\\_Like\\_Home](http://www.nlchp.org/Theres_No_Place_Like_Home) (last visited 11/1/2013).

140. 750 ILL. COMP. STAT. ANN. 60 / 214 (West 2012); IOWA CODE § 236.5 (2012); LA. REV. STAT. ANN. § 46:2136 (2012); GA. CODE ANN. § 19-13-4(a) (2012); MISS. CODE ANN. § 93-21-15 (2008); N.M. STAT. ANN. § 40-13-5 (2012); N.C. GEN. STAT. § 50B-3 (2012); 23 PA. CONS. STAT. ANN. § 6108 (West 2012); TENN. CODE ANN. § 36-3-606 (West 2012); VA. CODE ANN. § 16.1-279.1 (2012); and WYO. STAT. ANN. § 35-21-105 (2012).

141. ARIZ. REV. STAT. § 33-1318 (LexisNexis 2012); COLO. REV. STAT. § 38-12-402(2) (2011); DEL. CODE ANN. tit. 25, § 5314 (2012); D.C. CODE § 42-3505.07 (LexisNexis 2012); 765 ILL. COMP. STAT. ANN. 750 / 15 (LexisNexis 2012); IND. CODE ANN. § 32-31-9-12 (LexisNexis 2012); MD. CODE ANN., REAL PROP. § 8-5A-02 (LexisNexis 2012); MINN. STAT. § 504B-205 (2007); N.Y. REAL PROP. LAW § 227-c (Consol. 2012); N.C. GEN. STAT. § 42-45.1 (2012); OR. REV. STAT. § 90.453 (2011); TEX. PROP. CODE ANN. § 92.016 (West 2010); WASH. REV. CODE ANN. § 59.18.575 (LexisNexis 2012); and WIS. STAT. § 704.16 (2012). See also Violence Against Women Act, 42 U.S.C. § 14043e-1 (2012).

142. LEGAL MOMENTUM, STATE LAW GUIDE: HOUSING PROTECTIONS FOR VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE AND STALKING (2010), available at <http://www.legalmomentum.org/assets/pdfs/housing-1.pdf> (identifying eight jurisdictions and Westchester County, NY as having anti-discrimination laws protecting domestic violence

various funding laws for shelters and transitional housing assist women subjected to abuse with limited economic means to nonetheless find a new temporary home.<sup>143</sup>

A woman subjected to abuse may seek a new home to create her personhood interest, develop her personal identity, or form strong community bonds. Sometimes a woman seeks a new home not because she wants to leave the shared home but because under the laws of her jurisdiction or as a result of the high rate of denial of a vacate request she was unable to exclude the respondent from the shared home.<sup>144</sup> If she was denied a vacate order, but wants to

---

victims). It is important to note that under the Federal Fair Housing Act, landlords, sellers of real estate, and mortgagees are unable to discriminate on the basis of sex. 42 U.S.C. §§ 3601-3606. Discrimination against women subjected to domestic violence can be illegal sex discrimination when even neutral housing policies have a disproportionate effect on women. Lapidus, *supra* note 80, at 380 (citing Secretary, U.S. Dep't of Hous. & Urban Dev., *ex rel. Alvera v. C.B.M. Group Inc.*, HUD ALJ No. 10-99-0538-8 (U.S. Dep't of Hous. & Urban Dev., Portland, Or., Apr. 16, 2001)). Ms. Alvera's landlord gave Ms. Alvera 24-hour notice of eviction because she had been assaulted by her husband. The eviction was based on the landlord's policy of evicting "tenants who pose a threat to the safety and well-being of other tenants in the complex. When one person in the household poses a threat, the entire household is evicted." *Id.* at 379 (citing *Alvera v. Creekside Village Apts.*, HUD ALJ No. 10-99-0538-8 (U.S. Dep't of Hous. & Urban Dev., Portland, Or., Oct. 22, 1999)). Under the Fair Housing Law, landlords cannot reject rental applications because an applicant has experienced domestic violence in the past, cannot enforce any rules against tenants experiencing domestic violence that do not apply to other tenants, and cannot evict domestic violence victims on account of domestic violence. Meris L. Bergquist, Esq., *After the Violence: Using Fair Housing Laws to Keep Women and Children Safe at Home*, 34-SPG VT. B.J. 46 (2008); AM. CIV. LIBERTIES UNION, KNOW YOUR HOUSING RIGHTS: FOR SURVIVORS OF DOMESTIC VIOLENCE (2008), available at <http://www.aclu.org/womens-rights/know-your-housing-rights-survivors-domestic-violence>; AM. CIV. LIBERTIES UNION, THE RIGHTS OF DOMESTIC VIOLENCE SURVIVORS IN PUBLIC AND SUBSIDIZED HOUSING (2008), available at [http://www.aclu.org/pdfs/womensrights/subsidized\\_housing\\_2008.pdf](http://www.aclu.org/pdfs/womensrights/subsidized_housing_2008.pdf).

143. For FY2011, President Obama requested \$649.36 million for violence against women programs. Twenty-five million dollars were for Transitional Housing Assistance grants through the Department of Justice and \$140 million were for Family Violence Prevention/Grants for Battered Women's Shelters administered by HHS. GARRINE P. LANEY, CONGRESSIONAL RESEARCH SERVICE, VIOLENCE AGAINST WOMEN ACT: HISTORY AND FEDERAL FUNDING 2 (2010). The Keeping Children and Families Safe Act of 2003, P.L. 108-36, and the PROTECT Act, P.L. 108-21, also authorized funds for HHS and DOJ transitional housing assistance programs for victims of domestic violence. *Id.* For FY2011 funding, the President requested \$25 million for DOJ's transitional housing assistance program. *Id.* at 4. The 2010 Consolidated Appropriations Act provided \$210 million for STOP grants, which included \$18 million for transitional housing assistance grants. *Id.* at CRS-14 n.b. The Transitional Housing for Victims of Domestic Violence authorization, administered by HHS, expired after FY2008. This HHS program never received appropriations. *Id.* at CRS-15 n.j.

144. See *supra* notes 87-92 and accompanying text.

separate, then she *must* find a new home. Of course, there are reasons why a woman may prefer this option, for example if she feels that it is the best option for her in regards to her safety or other issues. She may want a home with an address unknown to respondent. An early lease termination law, for example, would permit the tenant to break her lease and move, undetected by her former abusive partner, to a new undisclosed location.

## *2. Benefits*

There are several important benefits to these laws. All of these laws facilitate the agency of a person subjected to abuse by offering short-term alternative homes. As noted earlier, buttressing a woman's agency can result in decreased violence.<sup>145</sup> Moreover, physical separation may decrease violence, although the research also shows that separation can have the opposite effect in certain circumstances.

These laws remove barriers to obtaining long-term homes. For example, anti-discrimination laws generally prevent landlords from rejecting rental applicants on the basis that the potential tenant was a petitioner in a CPO case, even if the landlord fears that such applicants may enter into violent relationships in the future and that violence would disrupt other tenants.<sup>146</sup> These laws also protect domestic violence victims, who, as applicants for mortgages, sometimes are seen as risky debtors and unlikely to repay mortgage loans. These laws prohibit mortgagees from refusing to loan money because the applicant was or is a victim of domestic violence. Accordingly, laws that prohibit discrimination on the basis of experience with domestic violence support women's efforts to move to a new home. These anti-discrimination laws recognize the dignity of persons and refuse to let it be overshadowed by an individual's subjugation to intimate partner violence.

Laws that assist victims who seek new homes also benefit respondents. If a victim of violence is able to find a new home, the respondent is more likely to be able to remain in the shared home,

---

145. *See supra* notes 22–24 and accompanying text.

146. Violence Against Women Act, 42 U.S.C. § 14043 (2012). In addition, eight states have specific fair housing acts protecting victims of domestic violence. *See* LEGAL MOMENTUM, *supra* note 142 (identifying eight jurisdictions and Westchester County, NY, as having anti-discrimination laws protecting domestic violence victims); Lapidus, *supra* note 80, at 384.

with the attendant benefits of maintaining his place of identity development and connection to his community. In addition, a very tangible benefit is that he will not be homeless provided he can afford maintaining the home.

### 3. *Shortcomings*

The laws addressing women subjected to violence seeking a new home have not been a panacea, however. In the main, too few jurisdictions provide for alternative housing in the CPO laws, early lease termination, or protection from discrimination. Under the CPO laws, only eleven states specifically require the respondent to provide alternative housing.<sup>147</sup> Often, this option is available only if the respondent has a duty to support the petitioner or their children, and the shared home is solely owned by respondent.<sup>148</sup> The alternative housing option under the CPO demonstrates Lorna Fox's position that too often the home is based on a woman's familial relationships rather than her own identity and needs.<sup>149</sup> Only two states specifically require respondent to pay rent for petitioner's alternative housing.<sup>150</sup> Accordingly, the limited availability of the alternative housing option undermines supporting a woman's dignity to answer for herself the meaning of her life through development of her home.

For tenants in federally-funded housing, there are more options for alternative housing, and they are not linked to women's familial relationships. Under the Violence Against Women Act (VAWA), the federal government supports the choice of a tenant who resides in a federally-funded public housing unit or receives federally-funded housing assistance, such as Section 8 vouchers, who decides to transfer or seek reassignment to a different unit if she was subjected

---

147. 750 ILL. COMP. STAT. ANN. 60 / 214 (West 2012); GA. CODE ANN. §19-13-4(a) (West 2012); LA. REV. STAT. ANN. § 46:2136 (2012); IOWA CODE § 236.5 (2012); MISS. CODE ANN. § 93-21-15 (2008); N.M. STAT. ANN. § 40-13-5 (2012); N.C. GEN. STAT. § 50B-3 (2012); 23 PA. CONS. STAT. ANN. § 6108 (West 2012); TENN. CODE ANN. § 36-3-606 (West 2012); VA. CODE ANN. § 16.1-279.1 (2012); and WYO. STAT. ANN. § 35-21-105 (2012).

148. *E.g.* 23 PA. CONS. STAT. ANN. § 6108 (West 2012).

149. *See* FINN & COLSON, *supra* note 46 (discussing Fox's theory that the individual female homeowner is invisible and the family as home occupier is highly visible).

150. N.J. STAT. ANN. § 2C:25-29 (West 2012) and W. VA. CODE ANN. § 48-27-403 (West 2012).

to domestic violence.<sup>151</sup> If she is a private tenant, however, only fourteen jurisdictions permit her to terminate her lease early because of domestic violence.<sup>152</sup> If she is able to terminate her lease early, she may have difficulty finding a new home. Prospective private landlords may refuse to rent to her in order to avoid any future domestic violence on the premises. Such discrimination is possible in most jurisdictions as only eight jurisdictions have anti-discrimination laws.<sup>153</sup> Under VAWA, public housing authorities and Section 8 landlords cannot deny admission to housing or use of her voucher because she is a victim of domestic violence.<sup>154</sup>

Women subjected to abuse may have difficulty identifying a new home because of the effects of the abuse to which they were subjected. Victims of domestic violence often are isolated from family, friends, and support networks.<sup>155</sup> The isolation can result from intentional actions by the abuser or from the woman's efforts to protect herself. As Professor Adele Morrison states, "Secrecy, silence and shame are also aspects of the abuse itself. Abusers use shame and secrecy as tools to control those they are victimizing."<sup>156</sup> Professor Beverly Balos has discussed how this resulting isolation is a

151. 42 U.S.C. § 1437f(r)(5) (2012). VAWA does not exempt the tenant from liability to her Section 8 landlord. The Department of Housing and Urban Development has issued policy guidance urging public housing agencies to ensure that tenants are transferred when needed because of domestic violence. U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK §§ 19.2, 19.4 (2003).

152. ARIZ. REV. STAT. § 33-1318 (LexisNexis 2012); COLO. REV. STAT. § 38-12-402(2) (2011); DEL. CODE ANN. tit. 25, § 5314 (2012); D.C. CODE § 42-3505.07 (LexisNexis 2012); 765 ILL. COMP. STAT. ANN. 750 / 15 (LexisNexis 2012); IND. CODE ANN. § 32-31-9-12 (LexisNexis 2012); MD. CODE ANN., Real Prop. § 8-5A-02 (LexisNexis 2012); MINN. STAT. § 504B-205 (2007); N.Y. REAL PROP. LAW § 227-c (Consol. 2012); N.C. GEN. STAT. § 42-45.1 (2012); OR. REV. STAT. § 90.453 (2011); TEX. PROP. CODE ANN. § 92.016 (West 2010); WASH. REV. CODE ANN. § 59.18.575 (LexisNexis 2012); and WIS. STAT. § 704.16 (2012).

153. See D.C. CODE §§ 2-1401.01-.03 (2001); IND. CODE ANN. § 32-31-9-12 (West 2007); N.C. GEN. STAT. ANN. § 42-45.1 (West 2012); OR. REV. STAT. ANN. §§ 90.456, .459 (West 2003); R.I. GEN. LAWS § 34-37-1 (2012); WASH. REV. CODE ANN. § 59.18.580 (West 2004); WIS. STAT. ANN. § 66.1201 (West 2009). LEGAL MOMENTUM, *supra* note 142 (identifying eight jurisdictions and Westchester County, NY as having anti-discrimination laws protecting domestic violence victims).

154. 42 U.S.C. §§ 1437d, 1437f (2012).

155. Johnson, *supra* note 4, at 1119-1121.

156. Adele M. Morrison, *Changing the Domestic Violence (Dis)course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1087 (2006).

barrier to women subjected to abuse who want to leave the home.<sup>157</sup> A woman isolated from family and friends may have difficulty requesting temporary shelter or financial support. Moreover, if isolated from the broader community, the woman may have difficulty knowing what resources might exist for her, such as temporary shelter, money for moving expenses, and access to transitional housing. Professor Berta Esperanza Hernandez-Truyol explains that “Latinas who suffer domestic violence are less likely than other women to contact friends, family, or clergy. The result is complete isolation that prevents Latinas from escaping abuse and receiving help.”<sup>158</sup>

Even if the woman is successful in finding a new home, moving to a new home away from the community may exacerbate her isolation. For example, many shelters are placed in confidential locations and thus can dislocate the woman from her community.<sup>159</sup> Even if separated from her abuser and living in a new home or shelter, isolation can increase a woman’s risk of violence. As Professors Epstein and Goodman explain, “research shows that women in hidden locations are no safer during their stay than women in open shelters where community members can participate in keeping residents safe.”<sup>160</sup>

In addition, women cannot benefit fully from existing laws, which permit or encourage them to leave a home shared with a violent partner, because women continue to have insufficient economic resources to leave the home. One study showed that for African American women, “economic dependence on her husband”

---

157. Beverly Balos, *A Man’s Home is his Castle: How the Law Shelters Domestic Violence and Sexual Harassment*, 23 ST. LOUIS U. PUB. L. REV. 77, 99 (2004).

158. Berta Esperanza Hernandez-Truyol, *Las Olvidadas-Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. GENDER RACE & JUST. 354, 385 (1998) (footnote omitted).

159. GOODMAN & EPSTEIN, *supra* note 27, at 102 (citing Haaken and Yragui 2003 study); SCHECHTER, *supra* note 44, at 59 (1982) (One Puerto Rican advocate stated “‘Puerto Rican women who come to the shelter are very scared. They don’t want to leave their community and come to a new place. They may have language problems. They don’t drive. They may never have paid bills or done a budget. They particularly dislike having to share rooms with other people, both black and white women. They have never lived this way before. They’re not used to living collectively or sharing apartments like white women do.’”)

160. GOODMAN & EPSTEIN, *supra* note 27, at 102 (citing Haaken and Yragui 2003 study).

was the primary factor causing a return to an abuser.<sup>161</sup> Even after extricating herself from lease obligations in the shared home, and even with protection from housing discrimination, for example, a woman who has been abused, like other potential tenants, still needs money to actually leave due to moving expenses, first and last months' rents, down-payment on mortgage, deposits for utilities, etc. Unlike many other tenants, however, a woman seeking a new home because of abuse may have little time to obtain these necessary funds.<sup>162</sup> If she finds temporary shelter upon leaving the shared home, she may have only the length of a shelter stay, often as little as fourteen days,<sup>163</sup> to accumulate sufficient resources; if she is unable to locate emergency shelter, she may need the funds immediately. For those women who live in one of the twenty jurisdictions that have crime victims' compensation fund monies that provide explicitly for relocation expenses, she may be able to access those funds.<sup>164</sup>

---

161. Cris M. Sullivan & Maureen H. Rumpitz, *Adjustment and Needs of African-American Women Who Utilized a Domestic Violence Shelter*, 9 VIOLENCE AND VICTIMS 275, 276 (1994).

162. *Id.* (“For women who use shelters, however, limited resources often trap them with their assailants.”).

163. *See, e.g.*, Martin Donohoe, *Homelessness in the United States: History, Epidemiology, Health Issues, Women, and Public Policy*, MEDSCAPE, (July 7, 2004), <http://www.medscape.com/viewarticle/481800> (“Average length of stay at a US shelter is 14 days; most allow a 30-day maximum stay.”).

164. Alabama (moving expenses, security deposits and utilities): ALA. CODE § 15–23–15 (1998); ALA. CRIME VICTIMS’ COMP. COMM’N, ANNUAL REPORT (2011), *available at* <http://www.acvcc.state.al.us/downloads/annualreport2011.pdf>; California (relocation): CAL. GOV’T CODE § 13957 (West 2010); Victim Comp. and Gov’t Claims Bd., *What’s Covered*, CA.GOV, <http://www.vcgcb.ca.gov/victims/coverage.aspx> (last visited Nov. 6, 2013); Delaware (temporary housing, relocation expenses, mortgage and rent payments): DEL. CODE ANN. tit. 11, § 9006 (West 2009); Del. Victims’ Comp. Assistance Program, *Compensation Program*, <http://attorneygeneral.delaware.gov/VCAP/compensation.htm> (last visited Nov. 6, 2013); District of Columbia (temporary shelter, first month’s rent and moving expenses): D.C. CODE § 4-507 (2000); SUPER. CT. OF THE DIST. OF COLUM., *supra* note 44; Florida (relocation expenses): FLA. STAT. ANN. § 960.198 (West 2012); Illinois (relocation, including temporary lodging, rent, security deposit and moving van and storage): ILL. COMP. STAT. ANN. 740 § 45 / 10.1 (West 2013); OFFICE OF THE ILL. ATT’Y GEN., CRIME VICTIM COMPENSATION: FREQUENTLY ASKED QUESTIONS, *available at* [http://www.ag.state.il.us/victims/CV\\_FAQ\\_0113.pdf](http://www.ag.state.il.us/victims/CV_FAQ_0113.pdf); Indiana (shelter expenses): IND. CODE ANN. § 5–2–6.1–21 (West 2009); Kansas (moving expenses): KAN. STAT. ANN. § 74–7305 (West 2011); CRIME VICTIMS COMP. BD., ANNUAL REPORT, *available at* <http://ag.ks.gov/docs/documents/crime-victims-compensation-board-annual-report-2012.pdf?sfvrsn=6>; Maryland (rent, utility bills or relocation expenses): MD. CODE ANN., Crim. Proc. § 11–810 (West 2004); CRIMINAL INJURIES COMPENSATION BOARD, DEP’T OF PUB. SAFETY & CORR. SERVS., 2003 ANNUAL REPORT, (2003), *available at*



Unfortunately, those monies do not exist in the majority of jurisdictions.

Many victims of physical, psychological, or emotional abuse are also subjected to various forms of economic abuse, potentially exacerbating the financial crisis in which a woman may find herself when seeking a new home. Financial abuse may include actions by the abuser that damage the woman's credit rating, sabotage her employment, require her to turn over any income earned to her partner, or exclude her from access to family monies.<sup>165</sup> As a result of the abuse, the petitioner's work, credit, and financial records may be poor. Therefore, landlords and mortgage companies may refuse to rent or loan money to her for housing.<sup>166</sup>

But access to short-term housing options, such as shelters<sup>167</sup> and transitional housing,<sup>168</sup> are not just limited by a woman's economic

<http://www.dpscs.state.md.us/publicinfo/publications/pdfs/CICB2004AnnRpt.pdf>;  
 Mississippi (relocation and temporary housing assistance): Miss. Code. Ann. § 99-41-5 (West 2012); Nevada (shelter and relocation costs): NEV. REV. STAT. ANN. § 217.090 (West 1991);  
 Dep't of Admin., Victims of Crime, *VOCP Benefits and Covered Expenses*, NV.GOV, [http://voc.nv.gov/VOCP/Covered\\_Expenses/](http://voc.nv.gov/VOCP/Covered_Expenses/) (last visited Nov. 6, 2013); New Hampshire (relocation expenses): N.H. REV. STAT. ANN. § 21-M:8-h (2013); ST. OF N.H. VICTIMS' COMP. PROGRAM, DEP'T OF JUSTICE, ARE YOU A VICTIM OF CRIME, *available at* <http://doj.nh.gov/grants-management/victims-compensation-program/documents/brochure.pdf>; New Jersey (moving expenses, first month's rent, security deposit, temporary shelter): N.J. STAT. ANN. § 52:4B-9 (West 2007); Victims of Crime Comp. Office, Dep't of Law & Pub. Safety, *Eligibility Requirements*, NJ.GOV, <http://www.nj.gov/oag/njvictims/eligibility.html> (last visited Nov. 6, 2013); New York (shelter and moving expenses): N.Y. EXEC. LAW § 525.12 (McKinney 2011); Office of Victim Servs., *Compensation*, NY.GOV, <http://www.ovs.ny.gov/services/VictimCompensation.aspx> (last visited Nov. 6, 2013); Pennsylvania (relocation expenses): 18 PA. STAT. ANN. § 11.103 (West 2005); Tennessee (moving expenses, storage fees and utility transfer fees): TENN. CODE ANN. § 29-13-106(a)(7) (West 2012); Texas (one-time relocation expenses, including rent, utilities, moving expenses): TEX. CODE CRIM. PROC. ANN. art. 56.42 (West 2003); Utah (relocation expenses): UTAH CODE ANN. § 63M-7-511 (West 2011); UTAH OFFICE FOR VICTIMS OF CRIME: CRIME VICTIM REPARATIONS PROGRAM, ARE YOU A VICTIM OF A CRIME, *available at* [http://www.crimevictim.state.ut.us/Documents/Crime%20Victim%20Information/CrimeVictimBrochure\\_2011.pdf](http://www.crimevictim.state.ut.us/Documents/Crime%20Victim%20Information/CrimeVictimBrochure_2011.pdf);  
 Vermont (rent, relocation and temporary living expenses): VT. STAT. ANN. tit. 13, § 5356 (West 2008); VT. CTR. FOR CRIME VICTIM SERVS.: VICTIMS COMP. PROGRAM, HAS YOUR LIFE BEEN AFFECTED BY CRIME?, *available at* <http://www.ccvv.state.vt.us/sites/default/files/resources/VCCVSAffected%20by%20Crime.pdf>; Virginia (reasonable moving expenses): VA. CODE ANN. § 19.2-368.11:1 (West 2008).

165. GOODMARK, *supra* note 26, at 42-43; Johnson, *supra* note 4, at 1115-24.

166. Lapidus, *supra* note 80, at 385.

167. For example, in Washington, D.C. there are ninety-six shelter beds that provide twenty- to thirty-day stays on average. In addition, there is available emergency shelter in local

means. Such housing options are also limited by the public funding for them. Routinely, public funding is high for the criminal justice response to domestic violence and much lower for housing. For example, the 2010 Consolidated Appropriations Act provided \$189 million for STOP grants,<sup>169</sup> monies which fund the criminal justice system's response to domestic violence.<sup>170</sup> The STOP grants budget has remained at the same level since 2010.<sup>171</sup> The Act provided only \$18 million for transitional housing assistance grants in 2010.<sup>172</sup>

---

hotels for an average of three nights. The emergency shelter offered 375 adults and approximately 700 children shelter in 2011. DC SAFE, *Statistics*, DCSAFE.ORG, <http://dcsafe.org/domestic-violence-info/statistics/> (last visited Nov. 6, 2013). Yet when one compares the numbers of persons able to be served to the 5,401 persons seeking domestic violence assistance by visiting the Domestic Violence Intake Center in Washington, D.C., it becomes clear that the number of people sheltered is inadequate. DC SAFE, *supra*.

168. For example, DASH, a nonprofit focusing on safe housing in Washington, D.C., has doubled the number of transitional housing units to 43. Dist. Alliance for Safe Housing, Programs & Services, <http://www.dashdc.org/programs-services/> (last visited Nov. 6, 2013). That still is far fewer units than needed for the large percentage of the 5401 persons who visit the Domestic Violence Intake Center in DC and need housing. See DC SAFE, *supra* note 167 and author's personal experience with the clients her clinic students represent.

169. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, FY 2013 APPROPRIATIONS BRIEFING BOOK 8 (2012), *available at* [http://www.nnedv.org/docs/Policy/FY\\_13\\_Briefing\\_Book.pdf](http://www.nnedv.org/docs/Policy/FY_13_Briefing_Book.pdf) (STOP grants for law enforcement agencies and prosecutor offices).

170. Stoeber, *supra* note 26, at 305 n.3 (stating that criminal justice response, and especially encouraging arrest policies, were "by far the largest category" of STOP funding). The Department of Justice explains that "the STOP Program promotes a coordinated, multidisciplinary approach to enhancing advocacy and improving the criminal justice system's response to violent crimes against women. It encourages the development and improvement of effective law enforcement and prosecution strategies to address violent crimes against women and the development and improvement of advocacy and services in cases involving violent crimes against women." Office on Violence Against Women, US Dep't of Justice, *Grant Programs*, USDOJ.GOV <http://www.ovw.usdoj.gov/ovwgrantprograms.htm#17> (last visited Nov. 6, 2013). As stated on the Michigan Department of Human Resources website, victim service programs are allocated 30% of the STOP grants as opposed to the criminal justice system, which received 50%. Specifically, the website states, "The federal STOP Violence Against Women program requires communities to show how it will allocate at least 25% of the grant to law enforcement, 25% to prosecution, 5% to courts, and 30% to victim services programs. The remaining 15% may be spent in any way the group decides is appropriate, but it must conform to the federal grant guidelines." Mich. Dep't of Human Servs., *STOP Violence Against Women Grants*, MICHIGAN.GOV, [http://www.michigan.gov/dhs/0,4562,7-124-7119\\_7261\\_7272-15062--,00.html](http://www.michigan.gov/dhs/0,4562,7-124-7119_7261_7272-15062--,00.html) (last visited Nov. 6, 2013).

171. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, *supra* note 169, at 6.

172. *Id.* The Transitional Housing Assistance Program seeks to provide "holistic, victim-centered" support services that move individuals into permanent housing. Office on Violence Against Women, *supra* note 170.

While the allocation for transitional housing increased to 25 million in 2012,<sup>173</sup> President Obama requested \$3 million less for 2013 transitional housing funding.<sup>174</sup> The Family Violence Prevention and Services Act, which provides money for domestic violence shelters along with counseling and hotline services, provided \$130 million in 2010.<sup>175</sup> President Obama's proposed budget for FY 2013 is \$135 million.<sup>176</sup>

Even with the funding provided,<sup>177</sup> local shelters and transitional housing still turn away tens of thousands of persons subjected to abuse each year.<sup>178</sup> In 2009, although able to serve over one million victims of domestic violence, shelters denied 167,069 requests due to lack of capacity.<sup>179</sup> Sixteen domestic violence shelters closed in 2009.<sup>180</sup> And in just one day in 2011, while 5,149 adults and 7,551 children were in transitional housing, 2,629 persons' requests for transitional housing were denied because of a lack of available units.<sup>181</sup> Similarly, in just one day in 2011, 10,581 requests for

---

173. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, *supra* note 169, at 6.

174. *Id.*

175. *Id.* at 7.

176. *Id.*

177. It is important to note that there are other federal housing assistance programs such as the Housing and Urban Development's McKinney-Vento Supportive Housing Program, state departments of social services, and the Federal Emergency Management Agency. See Alyse Faye Haugen, Comment, *When it Rains it Pours: The Violence Against Women Act's Failure to Provide Shelter From the Storm of Domestic Violence*, 14 SCHOLAR 1035, 1063 n.138 (2012).

178. Nat'l Coalition Against Domestic Violence, *State Facts*, NCADV.ORG <http://www.ncadv.org/resources/FactSheets.php> (last visited Nov. 6, 2013). For instance, "[i]n 2007, 8,324 men, women and children were turned away from shelters in Missouri because they were full." NAT'L COALITION AGAINST DOMESTIC VIOLENCE, MISSOURI DOMESTIC VIOLENCE FACTS, *available at* <http://www.ncadv.org/files/Missouri%202009.pdf>. In addition, "[i]n 2006, 10,131 adults and 12,076 children were turned away from [New York] shelters due to lack of space." NAT'L COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS: NEW YORK, *available at* <http://www.ncadv.org/files/New%20York%20new%202009.pdf>. In Colorado, the lack of affordable housing makes it difficult for victims to transition from shelters to permanent residences and therefore, if possible, victims request to extend their shelter times. NAT'L COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS: COLORADO, *available at* <http://www.ncadv.org/files/Colorado%20revised%202009.pdf>. See also Haugen, *supra* note 177, at 1057.

179. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, *supra* note 169, at 20.

180. *Id.* at 5.

181. *Id.* at 20.

shelter and other nonresidential services were denied because of a lack of resources.<sup>182</sup>

For those women able to enter the shelters, the maximum stay is often thirty days.<sup>183</sup> Locating permanent housing can take six months or longer, however.<sup>184</sup> Due to the shortage of alternative housing, women who would otherwise reside apart from an abusive partner often are unable to do so.<sup>185</sup>

Even fewer options are available for men, transgendered persons,<sup>186</sup> persons with disabilities, and women who have limited English proficiency.<sup>187</sup> Shelters are not always able to accommodate dietary, religious, or cultural differences.<sup>188</sup> Restrictions as to the number and ages of children also serve as barriers to shelter entry for women with large families.<sup>189</sup> Women who suffer from mental illness and substance abuse are often screened out at a shelter's intake as well.<sup>190</sup>

182. *Id.* at 4.

183. Ashley Lowe & Sarah R. Prout, *Economic Justice in Domestic Violence Litigation*, MICH. B.J., Sept. 2011, at 32, 33. The average stay is sixty days in an emergency homeless shelter. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, *supra* note 169, at 20.

184. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, *supra* note 169, at 20; Lowe & Prout, *supra* note 183, at 33.

185. CAMPAIGN FOR FUNDING TO END DOMESTIC AND SEXUAL VIOLENCE, *supra* note 169, at 20; Lowe & Prout, *supra* note 183, at 33.

186. *See* Goodmark, *supra* note 4.

187. Jessica H. Stein, *Coalition, Cross-Cultural Lawyering, and Intersectionality: Immigrant Identity as a Barrier to Effective Legal Counseling for Domestic Violence Victims*, 11 CONN. PUB. INT. L.J. 133, 154 (2011) (“Issues with shelter, language, and food, for instance, cause victims to return to their abusers even if they were able to leave initially.”); Hernandez-Truyol, *supra* note 158, at 385 (describing the barrier to Latinas in English-only policies, which result from the absence of Spanish speaking staff).

188. *See, e.g.*, Nooria Faizi, *Domestic Violence in the Muslim Community*, 10 TEX. J. WOMEN & L. 209, 219 (2001) (explaining that Muslim women do not feel comfortable in “western” shelters because of the cultural, religious and dietary differences); Felicia E. Franco, *Unconditional Safety for Conditional Immigrant Women*, 11 BERKELEY WOMEN’S L.J. 99, 125–26 (1996) (explaining the impact of cultural and religious differences on Asian and Latina immigrants); Sharon Stapel, *Falling to Pieces: New York State Civil Legal Remedies Available to Lesbian, Gay, Bisexual, and Transgender Survivors of Domestic Violence*, 52 N.Y. L. SCH. L. REV. 247, 264 (2007–2008) (explaining that domestic violence shelters “often do not provide appropriate services for LGBT survivors”); Stein, *supra* note 187, at 154.

189. Hernandez-Truyol, *supra* note 158, at 385 (identifying such policies as barriers to Latinas who may have large families).

190. Louisa Gilbert, *Mainstream Legal Responses to Domestic Violence vs. Real Needs of Diverse Communities*, 29 FORDHAM URB. L.J. 13, 46 (2001) (“I do not know of one domestic violence shelter in New York City that serves women who report current drug use.”); Hilary

Another shortcoming to relying on shelters as a new home for women subjected to abuse is that women find certain shelters increasingly inhospitable, even hostile, environments. Initially, shelters operated on empowerment-oriented, feminist models.<sup>191</sup> For instance, shelters recognized domestic violence as systemic in nature, and expressly provided domestic violence services within a larger context of gender oppression.<sup>192</sup> As government funding became available for shelters, however, funding requirements led shelters to approach domestic violence as an individualized problem, rather than a manifestation of shared, societal concerns. Today, shelters increasingly focus on interventions and treatments for the women staying in the shelter, such as requiring them to apply for government benefits and substance abuse and therapeutic counseling.<sup>193</sup> As Susan Schechter points out, shelter residents are subjected often to onerous bureaucratic rules.<sup>194</sup> Shelters also sometimes impose on mothers prescribed parenting practices, and insist that women have no contact with their batterers.<sup>195</sup> These requirements and restrictions may cause women to refrain from entering shelters or to leave shelters abruptly.

Finally, another shortcoming to creating a new home at a shelter is that the shelter stay itself does not necessarily stop the violence. One study showed that ten weeks after a shelter stay, 46% of women continued to experience domestic violence.<sup>196</sup>

---

Mattis, *California's Survivors of Domestic Violence Employment Leave Act: The Twenty-Five Employee Minimum Is Not A Good Rule of Thumb*, 50 SANTA CLARA L. REV. 1319, 1326–27 (2010) (“Some domestic violence shelters also turn away particularly vulnerable women, such as homeless women and women with drug or alcohol addiction.”).

191. GOODMAN & EPSTEIN, *supra* note 27, at 93; SCHECHTER, *supra* note 44, at 63.

192. SCHECHTER, *supra* note 44.

193. EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 76 (2007) (citing a 1993 study finding that of 379 advocacy programs, the majority “emphasized counseling, information, and referral, meeting immediate needs for clothing or shelter, helping women get protection orders, and other direct services rather than systems change, although many understood that structured change was a precondition for effective help.”); KRISTIN BUMILLER, IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE 70–71 (2008).

194. GOODMAN & EPSTEIN, *supra* note 27, at 93; SCHECHTER, *supra* note 44, at 63.

195. BUMILLER, *supra* note 193, at 131 (“Social workers acquired a mandate to eradicate intimate violence through the treatment of victims rather than focusing on solutions that would require changing the behavior of perpetrators.”).

196. Sullivan & Rumpetz, *supra* note 161, at 281.

*D. Chooses to End Violence and Stay with Respondent in Home*

For the petitioner who chooses to end the violence but stay with her intimate partner in the home there are few legal remedies. The paucity of options is a result of the legal system's limited goal of short-term safety through physical separation that was discussed above. If an individual wishes to end the abuse but stay in her relationship, all of the options focused on physical separation do not meet her goal. Other choices are scarce. As a result, the legal system has not created as many choices as possible to support an individual in this position and thus support her dignity to have a shared home and decrease domestic violence.

*1. CPO no further abuse provision*

CPO laws generally permit a petitioner to seek an order enjoining the abuser from future abusive conduct without also seeking an order directing the abuser to leave the home or refrain from contact with the victim.<sup>197</sup> Accordingly, in most states, civil protection order laws permit a person subjected to abuse to stay in the shared home with the abusive partner, including while continuing their relationship. In a few jurisdictions, however, the CPO law does not permit a petitioner to seek a “no abuse” order without ending her relationship with the partner who abused her.<sup>198</sup>

*2. Benefits*

A woman subjected to abuse might choose to stay in the home and continue her relationship with the person who abused her for a wide range of reasons.<sup>199</sup> Attuned to her partner's personality and predilections, the person may believe that the violence will decrease if the relationship continues. Some studies show that this does happen.<sup>200</sup> The emotional connection she feels to her intimate

---

197. MD. CODE ANN., Family Law § 4-506 (West 2012).

198. See 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, 1504 n.110 (2008) (citing N.J. STAT. ANN. § 2C:25-28.1 (establishing that no protection order can be granted that would permit respondent to share the premises with petitioner)); Stoeber, *supra* note 26, at 333.

199. Goldfarb, *supra* note 198, at 1520-21.

200. GOODMAN & EPSTEIN, *supra* note 27, at 98 (showing that safety can increase while continuing the relationship with person who had committed the abuse in the past).

partner may be strong, despite the abuse,<sup>201</sup> or she may want the family to stay united in one home if there are children.<sup>202</sup> She may be concerned about her financial viability or the loss of community ties if she separates.<sup>203</sup> Moreover, the person may be concerned that violence will increase if she ends the relationship, leaves the home, or forces the abusive partner to do so.<sup>204</sup> Similarly, she may be choosing to avoid future psychological harm that would result from separation violence.<sup>205</sup> Finally, as discussed above, women can be empowered by tailoring a remedy to their own, individual situation.<sup>206</sup>

### 3. *Shortcomings*

As discussed above, there is only one law that specifically permits women to remain in a shared home with the abusive partner while ending the violence. This “no further abuse” provision of CPO laws does not, however, comprehensively address the needs presented by the situation. For example, these CPO laws do not direct provision of financial assistance to maintain the home or address the woman’s economic or isolated situation, if present. And while no crime victims’ compensation law explicitly provides for rental or mortgage assistance for a victim who does not relocate, one jurisdiction, West Virginia, explicitly discourages payment of any monies that would benefit a respondent if the victim continues to live with him.<sup>207</sup> CPO laws do not also contain provisions that address a woman’s agency while in the

---

201. GOODMARK, *supra* note 26, at 96–101 (2012) (discussing love); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 17 (1989); Stoever, *supra* note 26, at 331–32.

202. Mahoney, *supra* note 201, at 17.

203. *Id.*

204. Stoever, *supra* note 26, at 332.

205. *Id.* (discussing that women who are abused may be staying in relationships that have been abusive in order to avoid “future threats of violence, as well as the psychological consequences of trauma, which include post-traumatic stress symptoms such as hyper-vigilance and anxiety-producing flashbacks of the violence”) (citing SONDRÁ BURMAN, COGNITIVE PROBLEM-SOLVING THERAPY AND STAGES OF CHANGE THAT FACILITATE AND SUSTAIN BATTERED WOMEN’S LEAVING, IN BATTERED WOMEN AND THEIR FAMILIES 33, 44 (Albert R. Roberts ed., 3d ed. 2007)).

206. Johnson, *supra* note 30, at 571.

207. W. VA. CODE ANN. § 14–2A–1 (West 2012) (“The extent to which a payment to a victim will support the offender by paying for the offender’s living expenses, including food, shelter, clothing, or entertainment, or the extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members, so as to avoid unjust enrichment of the offender.”).

home—such as explicitly protecting or supporting a woman’s agency to maintain relationships with family and friends as well as to maintain or seek employment.

The effectiveness of laws that permit women to remain in a shared home with an abusive partner is hamstrung by the ambivalence of system actors about the appropriateness of this remedy. Such ambivalence undermines the dignity of women subjected to abuse as well as men who have perpetrated abuse. As noted earlier, civil and criminal justice system responses to domestic violence are premised on physical separation as the key to safety. Thus, lawyers, judges, courtroom clerks, and advocates may not inform women that this option is available, or may discourage the choice<sup>208</sup> by berating or verbalizing frustration with a woman’s choice to stay with her partner who had abused her.<sup>209</sup> Judges sometimes disbelieve women who testify that they were abused and who also seek to stay in a shared home with the abuser, finding the desire to stay impossibly irreconcilable with the experience of abuse.<sup>210</sup> As a result, persons subjected to abuse may not actually be able to actualize their choice—or may be reluctant to exercise it. Such undermining of agency and dignity can actually increase women’s risk of future violence.<sup>211</sup>

### III. PROPOSAL: A HOME WITH DIGNITY EVEN AMIDST DOMESTIC VIOLENCE

As discussed above in Part II, obstacles in the current legal landscape to owning or maintaining a home for women subjected to abuse and men who abuse may increase domestic violence. These obstacles are embedded in the current legal system’s narrow, ill-defined goals, the actual laws themselves, and their attached funding schemes.

#### *A. Current Obstacles*

First, an important obstacle to owning and maintaining a home and ending domestic violence is the fact that the connection between

---

208. GOODMAN & EPSTEIN, *supra* note 27, at 98.

209. Stoever, *supra* note 26, at 336–41.

210. *Id.* at 336.

211. See Gist, *supra* note 24; Tamara Kuennen, “No-Drop” Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims, 16 UCLA WOMEN’S L.J. 39, 91–94 (2009).



home control and ending domestic violence is underdeveloped. This obstacle is explained in part by Lorna Fox's theory of the invisibility of women as single home owners and occupiers. As a result, women subjected to abuse have a limited ability to maintain their home or obtain a new home without being a spouse or having children with her abuser. Contributing to this result is the low court rate of issuing vacate orders against respondents, regardless of respondents' ownership interests in the home.<sup>212</sup> Also, the limited number of jurisdictions that offer exclusion and stay away from the home orders against respondent while also granting petitioner exclusive possession makes it difficult for women subjected to abuse to control their own home. And because few jurisdictions provide lock-change rights, eviction defense protection, CPO alternative housing options, financial assistance for housing, and anti-discrimination laws there are even fewer opportunities for women subjected to abuse to maintain their own home. This obstacle can undermine petitioners' dignity, such as their personal development, expression of their individuality, their bodily health and integrity, their emotions, their affiliation with others and their control over their environment. The obstacle in maintaining their home or obtaining a new home also thwarts women's agency, further increasing their risk of violence.

Second, many laws that promote separation as the only option to ending domestic violence. This obstacle is often grounded in a belief that violence is short-term and can be stopped by establishing physical barriers. This obstacle is also often bounded in a black and white view of domestic violence—that it is either egregious or not present and that a person subjected to domestic violence is either a victim and lacks agency or is a survivor and demonstrates her agency by leaving. The laws that promote separation rarely permit a woman subjected to abuse to choose to stay in the relationship and home but end the violence. As a result, the laws often undercut both parties' dignity by failing to respect their intimate associations and a woman's choice to control her environment.

Third, many jurisdictions vacate respondents from their solely-owned homes without consideration of their attachment to the property or their alternative living arrangements. Moreover, there is no system in place to provide alternative homes for men who are abusive, such as shelters. As a result, the law does not support

---

212. *See supra* text accompanying note 1.

respondents' dignity as it does not consider respondents' home and how it interplays with respondents' development and expression of their individuality, their affiliation with their neighbors and community members, and their control over their environment. Most vacate remedies do not require more proof than the abuse committed by respondent against an intimate partner in order to exclude him from the home. As a result, the law does not provide respondents a voice in the vacate process and respondents may view this as unfair. Such unfairness can also result in diminished compliance with protective orders and increased violence.

What we see from these obstacles is that the home is critical, the choice of which home is critical, and the support for the home is critical for dignity and overcoming the obstacles to ending domestic violence. Therefore, I propose that our legal system reconceive how best to create or maintain a home for both parties. The legal system response to domestic violence could eradicate many of these obstacles if it were guided by the value of supporting dignity, which is integrally connected to having a home and ending domestic violence.

*B. Feminist Domestic Violence Movement Should Focus More on Dignity and Greater Home Access*

The feminist domestic violence movement could play an important role in transforming the current legal system response to domestic violence, which is currently focused on a narrow concept of safety premised on physical separation in the home. The movement could work towards improving domestic violence laws, policy, and funding decisions to reflect a broader, comprehensive focus on dignity. Focusing on the value of dignity could invigorate the concept of home and promote the goal of ending domestic violence, rather than merely containing or responding to its outbreaks of violence. As discussed earlier in this Article, supporting dignity includes supporting such human capacities as life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment.<sup>213</sup>

---

213. See *supra* text accompanying note 38.

The first obstacle to the legal system ending domestic violence identified above is that the legal system misunderstands the connection between home control and ending domestic violence. As seen in the case study of low-income Puerto Rican women, maintaining their home or obtaining a new home was critical to the cessation of domestic violence.<sup>214</sup> This is true even if the women chose to stay in their relationships.<sup>215</sup> Susan Schechter aptly identified the need for an expanded focus for the feminist domestic violence movement to focus beyond domestic violence as individual problems rather than collective ones and to connect battering to “the larger struggle to free women from oppression . . . [and to] other political struggles.”<sup>216</sup> This expanded focus could include added support for the dignity of women subjected to abuse. Accordingly, the movement could highlight the importance of supporting women’s dignity by expanding to more jurisdictions helpful laws (such as vacate laws with exclusive possession to petitioner) and to ensure that the law on the books (such as the CPO vacate law) is actually effectuated in reality.

The second obstacle discussed above is the legal system’s heavy focus on separation and short-term options for women subjected to abuse. With a renewed focus on dignity, the feminist community could explore the importance of the woman’s connection to and relationship with her partner and her community and its ability to support her, and thereby enrich the personhood stake in her home. If dignity were the overriding value in domestic violence law and policy, resources could be redistributed to provide more funding for shelters, transitional housing, and alternative housing promoting a stable home to balance out the heavy emphasis and funding of the criminal justice system responses to domestic violence. The enlarged focus would create a more nuanced meaning of safety, so that separation and sole possession of the home would not be the only ways to end domestic violence, and indeed could be recognized as threatening safety in some circumstances. Focusing on dignity could help ensure that shelter housing is not the end of the process for finding a home, and instead expand the options for long-term home options as well. And focusing on dignity would recognize and

---

214. *See supra* text accompanying note 75.

215. *Id.*

216. SCHECHTER, *supra* note 44, at 252.

support the woman's rationality, practical decision making, emotions, and intimate associations, including decisions to stay in the relationship and shared home and attempt to end the violence.

The third obstacle discussed above is that the legal system unfairly undermines the dignity of men who abuse women. Rather than exploring how best to allocate the home when there is domestic violence, the vast majority of jurisdictions vacate a respondent regardless of his sole-ownership of his home and without any inquiry into his attachment to the home or his alternative housing options. Once found to have committed abuse, most CPO laws permit a vacate order without further proof. As a result, respondent is denied a voice in the process of determining who shall have access to which home. If the feminist domestic violence movement could focus more on dignity—including the dignity of men who abuse—there could be a focus on giving voice to the men. The focus on dignity will further the goal of ending domestic violence. Under the theory of procedural justice, if the legal system provides an opportunity for each party to voice their concerns about an issue, there will be greater compliance with the final order. In addition, given the concerns courts have made regarding the lack of a voice for respondents, if there is a chance for respondents to voice their attachment to and need for a home, perhaps more courts will vacate respondents when necessary because the courts will feel the system is fairer.

*C. Focused on Dignity, the Domestic Violence Movement May More Effectively End Abuse in the Home*

With a greater focus on dignity, the feminist domestic violence movement may spawn effective reform to end domestic violence in homes. As discussed above, our current legal system does not adequately address both parties' need for a home when there is domestic violence. As a result, the goal of ending domestic violence and each party's dignity are undermined. Focusing on dignity, and the connection between supporting human being's capabilities, advocates can argue for new laws that could address the right to a home when there is domestic violence. Below are two ideas for legal change to tackle the obstacles addressed in this Article.

*1. Expand criteria for home possession based on goals of ending domestic violence, supporting dignity, and affirming the importance of home*

One legislative proposal is to expand the criteria for determining home possession. For CPO vacate laws, rather than considering simply whether the petitioner or respondent should remain in the home based on whether or not there was abuse, the law should use a series of factors that would honor all of the competing values, such as fairness, property interests, economic resources, community connection, ending domestic violence, and the benefits of home. In allocating property rights to shared homes, courts should weigh the petitioner's interest in ending domestic violence, the court's finding that respondent committed abuse against petitioner, the woman's agency, the property interests in the home held by each party, each party's personhood interest in the home, and each party's connection to and reliance upon the community in which the home is located. In addition, the court could be ordered to consider the family relationships that exist between the petitioner and respondent, as well as whether there are any minor children. Finally, the court should consider the economic resources held by each party, the access to alternative housing for each party, and the duration of the order that would exclude the party from the home. The vacate provisions themselves should list all of these factors to be weighed, and identify the guiding values of ending domestic violence, supporting dignity, and affirming the importance of home.

Although four jurisdictions currently have a factor analysis built into their property-allocation provision, the factors are more limited than those proposed here.<sup>217</sup> In addition, these jurisdictions do not provide any guidance for why the criteria were selected or how to weigh the factors.<sup>218</sup> A textured analysis of these factors may avoid

---

217. ARIZ. R. PROTECTIVE ORDER PROC. R. 6 C.5.b; 750 ILCS 60/214 (b) (Ill.); MD. CODE ANN., Fam. Law § 4-506(h); and NDCC, 14-07.1-08 (N.D.). Under MD. CODE ANN., Family Law § 4-506(h) (2012), the factors are: "(1) the housing needs of any minor child living in the home; (2) the duration of the relationship between the respondent and any person eligible for relief; (3) title to the home; (4) pendency and type of criminal charges against the respondent; (5) the history and severity of abuse in the relationship between the respondent and any person eligible for relief; (6) the existence of alternative housing for the respondent and any person eligible for relief; and (7) the financial resources of the respondent and the person eligible for relief."

218. PROTECTIVE ORDER R. 6 C.5.b; 750 ILCS 60 / 214 (b) (Ill.); § 4-506(h); and NDCC, 14-07.1-08.

court decisions, for example, that attempt to overcome the fairness concern raised by vacating a respondent from solely-owned property by weighing respondent's property interests more heavily than deserved given the respondent's connection to the property.

*2. Increase the number of home options based on goals of ending domestic violence, supporting dignity, and affirming the importance of home*

Another legislative proposal consistent with a focus on dignity is increasing the number of home options. For instance, vacate laws should focus not only on which party will have exclusive or shared possessory rights to the home, but also should ensure that such decisions result in a suitable and stable home for each party. Neither party should become homeless, lose contact with her or his personhood property, or become dislocated from her or his community. For instance, if respondent is able to maintain exclusive possession of the shared residence after the CPO, the vacate laws should provide a mechanism for petitioner to obtain funds from respondent (if available) for alternative housing as a petitioner may do in New Jersey and West Virginia or she should be provided an alternative home, if the respondent can provide one, as is permitted in ten jurisdictions. Similarly, if petitioner is granted exclusive possessory rights over the home, the vacate laws should provide a remedy of obtaining funds from the respondent to assist petitioner in necessary household expenses, such as the rent, mortgage, utilities, and real estate taxes, if he is able to afford it. In addition, all jurisdictions should have early lease termination laws and anti-discrimination laws for domestic violence victims to make finding a new home for the person subjected to abuse a real option.

In addition, private and public support for shelters and low-barrier housing should be increased for persons subjected to abuse to ensure that there are housing options beyond the shared home that would not only support the agency, dignity, and safety of the petitioner but also the respondent (by staying in the shared residence) as well. For example, the Alaska public housing agency recently began a new program that provides displaced victims of domestic violence with thirty-six months of rental assistance.<sup>219</sup>

---

219. ALASKA HOUSING FINANCE CORPORATION, MEMORANDUM OF UNDERSTANDING 3 (2012), available at [http://www.ahfc.us/iceimages/rental/empowering\\_choice\\_housing\\_mou.pdf](http://www.ahfc.us/iceimages/rental/empowering_choice_housing_mou.pdf).

Recently, there have been positive developments in lowering barriers to shelters and transitional housing,<sup>220</sup> and these improvements should continue to make this housing more accessible and livable for persons subjected to abuse in a way that permits them to be connected to the community and even their partner if they so wish. Increased housing options also could preclude both parties from becoming homeless as a result of the domestic violence.

### CONCLUSION

In sum, the legal system does not appropriately address all of the issues that are critical to supporting each party's need for a home. As a result of this deficit, domestic violence may be exacerbated, the parties may become homeless, and the parties' dignity is diminished. This problem results from the legal system's limited goals for the system—achieving a narrow view of short-term safety premised on physical separation in the home. I argue for creating a comprehensive theory that addresses the rights to a home when there is domestic violence by focusing on each party's dignity, the importance of home, and ending domestic violence. My proposal for supporting the dignity of each party in these situations is to have the feminist domestic violence movement focus more on dignity and greater access to a home. The goal of this focus would be to advocate for system change and new and expanded laws. Legislative changes could include creating factors to guide the vacate decision and to increase the number of housing options for both women subjected to abuse and men who perpetrate abuse.

---

220. DIST. ALLIANCE FOR SAFE HOUS., *supra* note 168.