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Intimate Terrorism, Psychological Enslavement, and Private Torture: Reconceptualizing Intimate Partner Violence Using a Human Rights Framework

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Intimate partner violence (IPV) is a disconcertingly prevalent and devastating phenomenon in U.S. society and one which too often goes unaddressed. Reconceptualizing IPV within a human rights framework can enable more survivors of IPV to access justice, as it provides internationally-accepted standards, language, and mechanisms by which to measure governmental responsibility for private harm. Specifically, this paper proposes that the International Covenant on Civil and Political Rights (ICCPR) is an appropriate tool by which to define the United States' failure to respond to IPV as a human rights violation. Incomplete definitions of IPV do not represent the totality of the abuse suffered, thereby impeding battered women's access to justice and enabling private torture. Sex discrimination and intersecting systems of oppression deny survivors of IPV access to legal resources, violating battered women's human rights to equal protection and freedom from discrimination. Further, the state's failure to consider alternate solutions to end abuse (beyond separation-based policies, enforcement of mandatory arrest, and no-drop prosecution policies) violate battered women's human rights to effective remedy. Each of these state failures constitutes a breach of state responsibilities as a party to the ICCPR and, as such, a human rights violation.

Intimate partner violence is insidious, ubiquitous, and profoundly destructive. Intimate partner violence (IPV) is endemic to all communities and spans all races, ages, ability statuses, socioeconomic

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classes, religions, education levels, genders, sexual orientations, and other identities. Scholars have long considered gender-based violence one of the most egregious rights violations, yet intimate partner violence continues to unite the world in its disconcerting prevalence; in almost every society in every region of the world, men batter women.

In the U.S., nearly three in ten women experience IPV and, on average, 24 people are victims of rape, physical violence, or stalking by an intimate partner every minute in the U.S. alone (Centers for Disease Control and Prevention, 2014). That means there are approximately 4.8 million incidences of intimate partner rapes and physical assaults against women annually in the U.S., impacting nearly 1.5 million American women (Tjaden & Thoennes, 2000). Furthermore, IPV accounts for 14 percent of all homicides annually (Centers for Disease Control and Prevention, 2014). Thus, the overall "medical care, mental health services, and lost productivity (e.g. time away from work) cost of IPV was an estimated $8.3 billion in 2003 dollars for women alone" (Centers for Disease Control and Prevention, 2014, p. 1). In light of the ubiquity of IPV, 92 percent of American women "said that fighting sexual and domestic violence should be a top public policy priority (a higher percentage than chose health care, child care, or any other issue)" (U.S. Department of Justice, 2006, p. 53). Despite these staggering statistics and the public outcry for reform, the U.S. has been slow to address laws that fail to remedy IPV and, in fact, can exacerbate it.

The impetus for change is human rights. Human rights frameworks have long been the tool of social justice advocates seeking to hold their governments accountable for institutional violence and systematic injustices. For instance, Malcolm X (1964) exhorted civil rights activists in the 1960s to embrace the language of human rights to challenge American racism:

> When you expand the civil-rights struggle to the level of human rights, you can then take the case of the black man in this country before the nations in the UN... Civil rights keeps you under [Uncle Sam's] restrictions, under his jurisdiction... Civil rights means you're asking Uncle Sam to treat you right. Human rights are something you were born with. Human rights are your God-given rights. Human rights are the rights that are recognized by all nations of this earth. And any time anyone violates your human rights, you can take them to the world court (para. 33-35).

These same principles are true of IPV. By reconceptualizing IPV laws in the framework of human rights, legal system actors will be forced to consider IPV an egregious concern worthy of concentrated efforts for redress, rather than as a tangential or inconsequential policy flaw. This paradigm shift will spur increased efforts to redress IPV in the U.S.

Previously, too little work has been done to approach violence against women in the West as a human rights issue under the umbrella of gender-based violence. Largely, this deficiency is because of

the insidious double standard rife within human rights discourse which paints the U.S. as the ultimate defender of human rights. It fallaciously presumes rights violations *only* happen outside U.S. borders and pointedly ignores the severity of violations domestically. Reconciling U.S. actions with the gravity of human rights violations creates a new analytical perspective to view IPV laws and their police and judicial enforcement. By reframing IPV in the U.S. as a grievous human rights violation, this paper takes direct aim at the American Exceptionalist double standard which dominates U.S. foreign policy posturing, whereby the same violatory practice which justifies bellicose intervention abroad fails to tarnish the supposedly-infallible human rights reputation of the U.S., even when constantly occurring domestically.

This paper will use the International Covenant on Civil and Political Rights (ICCPR) to bridge this double standard and reconceptualize IPV within a framework of human rights. After defining the intricacies of IPV, this paper discusses the U.S. double standard in its tentative embrace of the language of human rights to condemn other countries' gender-based rights violations through a case study of the rhetoric of Afghan women's rights to justify the War on Terror. The next section addresses three prominent human rights mechanisms previously used to try to reconcile IPV in the U.S. and human rights, though they have had limited success: The Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture, and the Inter-American Commission on Human Rights. This paper instead proposes the ICCPR as a new means of bridging this double standard, as — because of its centrality to the human rights corpus— the ICCPR can produce more significant results. Specifically, this paper addresses three ways IPV laws in the U.S. constitute human rights violations under the ICCPR. First, reductive definitions of IPV facilitate continued abuse and thereby violate battered women's right to freedom from torture. Secondly, sex-discriminatory tropes of victimhood and barriers to legal resources — because of battered women's race, class, and immigration status — violate battered women's right to equal protection and freedom from discrimination. Third, responses to IPV undercut victim autonomy and wrongfully prioritize separation-based solutions, violating battered women's rights to effective remedy.

A Note on the Scope and Language of the Paper

Although IPV occurs within all forms of relationships, this paper specifically addresses IPV within heterosexual relationships wherein the male batters his female partner. This decision is motivated in

large part by the fact that the overwhelming number of abusive relationships follow this pattern.[2] Additionally, this decision is made in recognition of the limitations of one paper to fully address the convoluted nature of IPV. The patriarchal gender dynamics of heterosexual, male-dominated abusive relationships are not entirely analogous to those in same-sex or female-dominated abusive relationships. Thus, including disparate relationship dynamics risks sacrificing depth for breadth. As a result, this paper will use gendered language: "he/him" pronouns for the batterer and "she/her" pronouns for the battered woman.

Language matters, and using respectful and appropriate terminology is critical. The term "victim" has long been considered a pejorative slur against women's autonomy which reduces the totality of an individual's life experience to a specific action perpetrated against them. As a result, in the context of gender-based violence, activists often replace it with the term "survivor" to denote women's continued agency and resilience in the face of trauma. It is semantically inappropriate, however, to refer to a woman presently being abused as a "survivor." This paper therefore draws a distinction between women currently in abusive relationships, referring to them as victims, and women who are no longer in abusive relationships — either because they have left the relationship or because it is no longer abusive — who are referred to as survivors.

Additionally, the term "battered woman" was appropriated by the feminist movement in the 1970s when IPV became one of the movement's major concerns, giving birth to the name "Battered Women's Movement." Recently, social justice activists have argued terminology should always reference personhood before a disorder or trauma, however (e.g. person with a disability, not disabled person). The alternate phrasing of battered woman would thereby be "woman who has been abused/battered." This phrasing, however, turns battering into a passive act and erases the batterer — the actor — from his battering. In light of the phrase's tradition and a deep desire to hold batterers accountable, this paper therefore uses the term "battered woman."

Although the terms are often used interchangeably, this paper uses the term "intimate partner violence," not the umbrella term "domestic violence." While domestic violence encompasses abuse from any member of one's household — including abuse by a parent, child, roommate, sibling, caretaker, etc. — IPV specifically occurs in intimate relationships (Oregon Department of Human Services, n.d.). Namely, IPV is abuse by "current and former dates, spouses, and cohabiting partners,

[2] For instance, compared to 7.6 percent of men, 25 percent of women surveyed in a study by Tjaden & Thoennes (2012) said they were physically or sexually assaulted by an intimate partner. Additionally, 70 percent of homicide victims killed by their intimate partner are *women* (Centers for Disease Control and Prevention, 2014).

with cohabiting partners meaning living together at least some of the time as a couple" (Tjaden & Thoennes, 2000, p. 5). By using IPV rather than domestic violence, this paper aims to (a) highlight the specific form of abuse discussed and (b) rebut the use of the broader term "domestic violence" to erase and marginalize the experiences of women battered by men from the discourse.

A Brief History of Intimate Partner Violence and the Battered Women's Movement

For the majority of American history, battered women had essentially no recourse in the criminal justice system. For many years, the English common law's "rule of thumb" prevailed in the U.S., whereby a man had the legal prerogative of physically "chastising" his wife as long as the switch with which he beat her was no wider than his thumb (Tetlow, 2009; Zelcer, 2014). In fact, spousal violence was not formally condemned until *Fulgham v. the State of Alabama* (1871) when an Alabama court rescinded a man's "husbandly" right to physically punish his wife (Barner & Carney, 2015). Despite the slow stream of legislation criminalizing spousal abuse which followed, it took nearly another century for the Battered Women's Movement (BWM) of the 1970s to begin dismantling cultural notions that IPV was not within the jurisdiction of law enforcement intervention (Goodmark, 2004; Bonanno, 2015; Goodmark, 2012; Zelcer, 2014).

The BWM rejected that IPV was a "private family matter" not subject to public discourse. It argued instead that IPV is a direct symptom of patriarchy, which advocates the continued subordination of women and justifies enacting violence against women without recourse (Bonanno, 2015; Goldscheid, 2006; Goodmark, 2012). The movement advanced four primary goals: (1) eliminating formal and legal inequalities between men and women, (2) enhancing criminal justice responses to IPV (e.g. criminalizing IPV and authorizing the use of expert testimony to explain the dynamics of abusive relationships), (3) expanding the social services available to battered women, and (4) creating civil justice responses to IPV (e.g. providing battered women civil protective orders and/or allowing women to sue their abusers for civil liability; Goldscheid, 2006). Through consciousness-raising campaigns and grassroots action, BWM activists confronted the deeply-entrenched societal institutions which sanction and legitimize the abuse of women, working to remove IPV from its "quarantine" in the private sphere (Bonanno, 2015; Goldsheid, 2006; Goodmark, 2004; Goodmark, 2012; Zelcer, 2014). This work dismantling the public/private sphere quarantine paved the way for modern social justice advocates and human rights scholars to then move IPV from the realm of domestic public discourse to the realm of international human rights.

What is Intimate Partner Violence?

In its statutory categorizations, there are four primary forms of IPV, although not every abusive relationship has each form: Physical violence, sexual violence, stalking, and psychological aggression. Physical violence is the most widely understood component of IPV: it "is the intentional use of physical force with the potential for causing death, disability, injury, or harm" — including with or without weapons — such as slapping, pushing, choking, punching, burning, etc. (Centers for Disease Control and Prevention, 2016, para. 5). The second category, sexual violence, involves non-consensual participation in a sex act, including coerced participation (which does not pass the threshold of legal consent) and instances in which a partner is unable to consent (such as when they are intoxicated, unconscious, or otherwise incapacitated)[3] (Centers for Disease Control and Prevention, 2014 and 2016). Stalking is the third form of IPV: it "is a pattern of repeated, unwanted attention and contact by a partner that causes fear or concern for one's own safety or the safety of someone else" close to the victim, such as a family member or friend (Centers for Disease Control and Prevention, 2016, para. 7). The fourth key component is psychological aggression, which is "the use of verbal and nonverbal communication with the intent to harm another person mentally or emotionally and/or exert control over another person" (Centers for Disease Control and Prevention, 2014, p. 1). Psychological aggression includes "expressive aggression" (e.g. humiliation, name-calling, and belittling), coercive control (e.g. isolation and excessive monitoring), and gas lighting (giving the victim false information to convince them to doubt their own memory or perception) (Centers for Disease Control and Prevention, 2016). Although this final form of IPV is often overlooked, much of the brutality of IPV is perpetrated through this psycho-emotional demoralization.

In fact, this aggression and brutalization is in many ways the hallmark of IPV because it is central to the dynamic of dominance and subordination the abuser exerts over his partner/ victim to establish power and control over her. Leigh Goodmark (2012), an attorney specializing in gender-based violence, wrote:

> Men deploy a number of tactics designed to establish dominance and privilege, prevent escape, repress conflict, and secure resources. Those tactics include intimidation, surveillance, degradation, shaming, and isolation. Intimidation... is used to instill fear, secrecy, dependence, compliance, and loyalty in the woman; intimidation robs the woman of psychological strength. Threats, surveillance, and degradation inform the woman's understanding of her partner's

[3] Sexual violence is itself broken into five categories: (1) forcibly raping/penetrating the victim; (2) forcing the victim to penetrate someone else; (3) penetrating the victim through non-physical pressure (e.g. verbal coercion or misuse of authority so the victim acquiesces to being penetrated); (4) subjecting the victim to unwanted sexual contact and/or fondling; (5) subjecting the victim to non-contact unwanted sexual experiences (e.g. exposure to pornography, sexual harassment, taking and/or disseminating sexual imagery of the victim, etc.; CDC, 2016).

> capacity for control and reinforce her sense of vulnerability... Degradation denies women self-respect... Isolation prevents women from disclosing their partner's behavior and from seeking help or support... Ultimately, coercively controlling men seek to deprive women of their freedom and potential for action, ensuring that they remain entrapped (p. 35-36).

To represent this dynamic, the Domestic Abuse Intervention Programs (DAIP) (2011) created the Power and Control Wheel (see Figure 1) in 1984 which centers this dominance-subordination dynamic in the illustration of IPV:

> [IPV] is characterized by the pattern of actions that an individual uses to intentionally control or dominate his intimate partner. That is why the words "power and control" are in the center of the wheel. A batterer systematically uses threats, intimidation, and coercion to instill fear in his partner. These behaviors are the spokes of the wheel. Physical and sexual violence holds it all together—this violence is the rim of the wheel... The wheel makes the pattern, intent, and impact of violence visible (para. 2-6).

By demonstrating the variety of tactics beyond physical battering which batterers use to maintain dominance, the wheel provides a more holistic understanding of IPV and how women become ensnared in abusive relationships. Additionally, the wheel crucially depicts the way in which IPV is a systematic pattern of *chronic* abuse — not just a set of isolated events. Referencing this, scholars describe IPV as a "continuous state of siege" (Tuerkheimer, 2004, p. 964), "intimate terrorism" (Humphreys & Thiara, 2003b), and "psychological enslavement" (Buel, 2003).

Applying Human Rights Frameworks to Intimate Partner Violence Internationally

Because of the extent to which IPV disrupts the victim's ability to enjoy her civil and human rights, a growing body of scholarship identifies IPV as a human rights concern. Some international legal actors rebut this notion on the premise that human rights violations are committed only by state, not private, actors — or, in other words, that human rights violations occur in the public, not the private, sphere[4] (Bettinger-López, 2008; Tetlow, 2009). International human rights principles, however, consider both direct state action (e.g. the violent repression of a group) a human rights violation *and* a state's failure to act (e.g. failure to prevent the violent repression of a group or to hold the oppressors accountable) a human rights violation (Powell, 2005; Tetlow, 2009; Blau, 2016). States are therefore obligated to protect individuals from harm by private actors (like batterers): "to investigate alleged violations and publicly report the results, and to provide an adequate and effective remedy when these

[4] Note the similarity of the "family matter" rhetoric which BWM activists rebutted when establishing IPV as a subject of legislative action to this argument regarding human rights violators.

duties are breached" (Bettinger-López, 2008, p. 21). This mandate is known as the due diligence standard (Human Rights Clinic at University of Miami School of Law et al., 2014). Under this standard, a state's failure to appropriately enforce IPV laws or provide adequate remedies to victims constitutes government sanction of gender-based violence through discriminatory under-enforcement, which the United Nations declared "has the cause and effect of subjugating women" (Tetlow, 2009, p. 121). Even the U.S. — which is internationally notorious for refusing to partake in international human rights mechanisms — has declared other countries' systemic failures to respond to gender-based violence a human rights violation. One of the most notable examples in recent history is the American condemnation of violence against women in Afghanistan as a human rights violation — and the U.S. subsequent self-proclaimed role as the savior of Afghan women — to justify the War on Terror. Best articulated in First Lady Laura Bush's November 17, 2001 radio address, this liberationist approach to invading Afghanistan argued:

> The plight of women...in Afghanistan is a matter of deliberate human cruelty, carried out by [terrorists] who seek to intimidate and control. Civilized people throughout the world are speaking out in horror...[However], because of our recent military gains in much of Afghanistan, women are no longer imprisoned in their homes. They can listen to music and teach their daughters without fear of punishment. Yet the terrorists who helped rule that country now plot and plan in many countries. And they must be stopped. The fight against terrorism is also a fight for the rights and dignity of women (para. 2-4).

The U.S. weaponized human rights rhetoric to depict its invasion of Afghanistan as a "liberating" war in which the American war machine "saved" the "oppressed" Afghan women. Without "American military gains," these women would have continued to suffer at the hands of the misogynistic, wife-beating, honor-killing terrorists (Abu-Lughod, 2002; Eisenstein, 2004; Powell, 2005; Choudhury, 2015). If one is able to look beyond the imperialist feminism and neocolonialism inherent in this liberationist approach, it appears that the U.S. vehemently and universally condemns gender-based violence — including IPV — as a human rights violation so grievous it justifies the violation of state sovereignty. If one is *un*able to look beyond the imperialist feminism and neocolonialism inherent in this liberationist approach, it becomes profoundly evident the U.S. embraces a double standard for gender-based violence (Abu-Lughod, 2002; Copelon, 2003; Eisenstein, 2004; Powell, 2005; Bettinger-López, 2008; Blau, 2016; Choudhury, 2015). This approach builds upon America's long history of justifying and institutionalizing American Exceptionalism wherein the U.S. touts itself as a political and moral paragon for the world — a "city upon a hill" (LaFeber, 2002). As a result, the U.S. can consider itself the foremost defender of human rights worldwide, ignore its own flagrant violations, and simultaneously charge

parallel violations across the ocean to be fodder for war (Eisenstein, 2004; Powell, 2004; Blau, 2016). Laura Bush's radio address, for instance, in its condemnation of the Afghan patriarchy, failed to take into account the extent to which American women, because of U.S. rape culture, *also* fear patriarchal violence in their daily lives, from avoiding walking alone late at night if possible to keeping close watch over their drinks at parties and bars (Eisenstein, 2004). The American Exceptionalist double standard alleges these parallel violations are not of equal import. Human rights lawyer Rhonda Copelon (2003) articulated this double standard:

> [The West tends] to focus on "cultural practices" — honor killings, FGM, and dowry deaths, for example— as human rights violations. But these are simply ritualized and openly legitimized versions of the implicitly accepted violence in the everyday — the intimidation, humiliation, beating, rape and killing of women in intimate relationships for some form of resistance to their gender-determined role or for no reason at all. In other words, throughout the world, as well as in the U.S., intimate battering of women is a pervasive "cultural practice," rooted in patriarchal norms of male superiority and control and female inferiority and obedience, encased in familial and social and economic structures of inequality, terrorizing women and perpetuating gender conformity and oppression (p. 871-2).

This deeply entrenched double standard makes it difficult for women to hold the U.S. accountable for gender-based human rights violations, even when the U.S. simultaneously wages a war against a foreign government for those same infractions. Bridging this double standard is therefore a critical step to ensuring that victims of IPV have access to justice.

Applying Human Rights Frameworks to Intimate Partner Violence Domestically

Despite the resounding domestic dismissal of IPV in the U.S. as a human rights violation, several international human rights mechanisms have attempted to bridge this double standard and reconceptualize IPV in the U.S. as a human rights violation, with mixed results. Specifically, this paper addresses prior uses of the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture, and the Inter-American Commission on Human Rights to hold the U.S. accountable for human rights violations stemming from failures of IPV laws.

Convention on the Elimination of All Forms of Discrimination Against Women

The most conspicuously pertinent international treaty is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Adopted by the UN General Assembly in 1979, CEDAW has been hailed as the "Magna Carta of equal rights for women" and contains unambiguous, explicit provisions declaring women's freedom from violence — including IPV — a fundamental human

right (Copelon, 2003; Choudhury, 2015; Martin, 2015). As, however, the U.S. is not party to CEDAW, the Convention has little coercive power to hold the U.S. accountable for the human rights violations within its IPV laws (Powell, 2005; Martin, 2015; United Nations Office of the High Commissioner for Human Rights, 2017). CEDAW cannot bridge the double standard.

Convention Against Torture

Since feminist advocates discovered the experiences of battered women are uncannily similar to those of prisoners of war (POWs), the idea IPV is a human rights violation of "private torture" has grown popular. Much like the torture of POWs, IPV incapacitates the victim so she cannot escape and consists of repeated, severe, and intentional suffering which is carried out in an extremely methodical manner (Meyersfeld, 2003). The ultimate goal of both "private torture" (i.e. IPV) and "official torture" (i.e. state-sanctioned torture) is complete control and submission through physical, psychological, and/or sexual aggression (Leonard, 1997; Buel, 2003; Humphreys & Thiara, 2003; Meyersfeld, 2003; Tuerkheimer, 2004). The tactics in both are disconcertingly similar: isolating the victim from all outside social supports and external stimuli apart from the captor, inducing debility and exhaustion to weaken the victim's ability to resist, fostering extreme dependency on the captor, sleep and food deprivation, degrading and humiliating the victim to deny her agency and cast doubt on her thoughts, and threatening the victim and her family/friends to cultivate perpetual fear and anxiety (Leonard, 1997; Buel, 2003; Meyersfeld, 2003). As a result, much like POWs after being tortured, victims of IPV also often suffer severe mental health concerns ranging from depression and self-harm, to intense post-traumatic stress disorder and suicidal behaviors (Humphreys & Thiara, 2003). Lawyer Sarah Buel (2003) wrote that "there are many analogies between war and [IPV]: at the least, both require careful strategic planning to avoid annihilation by the enemy" (p. 80).

Furthermore, much like official torture, private torture in the form of IPV often requires state acquiescence through a government's failure to act. According to international legal principles, when governments fail to institute preventative measures, do not appropriately respond to allegations of harm, provide inadequate remedies (if any) to victims, or otherwise turn a blind eye to victims' suffering, the state sanctions the torture through its inaction (Buel, 2003; Meyersfeld, 2003). The perpetrators can therefore continue their practice unabated and escalate the frequency and severity of violence (Meyersfeld, 2003).

If IPV were legally considered tantamount to torture, then a state's failure to appropriately address and prevent IPV would be under the purview of the Convention Against Torture (CAT), and

individuals could bring their government before the Committee Against Torture, the monitoring body over CAT, for remedy (Meyersfeld, 2003; United Nations Office of the High Commissioner for Human Rights, 2017). However, even though CAT is one of the few international treaty bodies to which the U.S. *is* party, CAT cannot necessarily bridge the double standard when the U.S. has already famously and repeatedly flagrantly violated the treaty in question[5]. These violations mitigate the treaty's coercive power. CAT therefore fails to bridge the double standard.

Inter-American Commission on Human Rights

In 2005, Jessica Gonzales became the first IPV survivor to file a petition with the Inter-American Commission on Human Rights (IACHR), alleging the U.S. violated her rights (*Jessica Lenahan [Gonzales] et al. v. United States)*. In 1999, Gonzales' "estranged husband violated a restraining order and kidnapped her three daughters, a scenario which ended in their death after multiple phone calls to the local police department failed to yield any action to locate her daughters" (Human Rights Clinic at University of Miami School of Law et al., 2014, p. 12). She filed a federal lawsuit against the police for violating her Fourteenth Amendment Due Process rights. The case was then appealed all the way to the Supreme Court, which held in a 7-2 decision that "Ms. Gonzales had no personal entitlement under the Due Process Clause to police enforcement of her restraining order" (Bettinger-López, 2008, p. 26). Having exhausted all legal avenues within the U.S., Gonzales turned to the IACHR for remedy. The IACHR is an independent and autonomous arm of the Organization of American States (OAS) (2011) "whose mission is to promote and protect human rights in the American hemisphere" (para. 1). It ruled in 2011 that the U.S. violated the principles of due diligence by failing to protect Jessica Gonzales and her daughters and that the U.S.'s actions constituted violations of Jessica Gonzales' rights to freedom from discrimination and to equal protection of the law (Human Rights Clinic at University of Miami School of Law et al., 2014).

This was a watershed moment for human rights in that not only was it the first time a survivor of IPV petitioned for redress against the U.S. for private harms, the Commission then sided with her. The

[5] Most notably, the Senate Intelligence Committee released a report in 2014 detailing the CIA's use of various forms of torture (which it called by the euphemism "enhanced interrogation techniques") during the War on Terror under the Bush administration (Ackerman et al., 2014; Ashkenas, et al., 2014; Laughland, 2015). Human rights activists have also pointed to the U.S. treatment of prisoners and "enemy combatants" at Guantánamo Bay and CIA black sites as evidence of the U.S. blatant violations of CAT and other anti-torture treaties (Laughland, 2015; Blau, 2016). Under the current Trump administration, violations of international law threaten to be even more flagrant, as he has promised to increase the utilization of Guantánamo Bay to detain suspected terrorists and to bring back waterboarding and "a whole hell of a lot worse than waterboarding" (Johnson, 2016).

decision was also momentous for its condemnation of the previous American position[6] that structural violence through state inaction is not a rights violation. The decision gave international gender rights activists hope that it would bridge the American Exceptionalist double standard, and the U.S. would finally be held accountable for its human rights violations (Bettinger-López, 2008). These high hopes have not been vindicated by history, however. *Gonzales* did not open the floodgates for litigation against the U.S. for human rights violations, and many IPV laws remain unchanged, allowing the persistence of structural violence. The relative anonymity of the IACHR in U.S. public life — particularly in comparison to the emphatic proliferation of American Exceptionalist principles — does not make it the ideal tool by which to hold the U.S. accountable for its human rights violations.

An Alternative Treaty to Bridge the Double Standard: the ICCPR

Two treaties form the core of the human rights corpus: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), representing the two major divisions of rights. Civil and political rights include rights such as freedom from torture, equal protection of the law, and access to effective remedy for rights violations; while economic, social, and cultural rights include the right to an education, an adequate standard of living, and health care, among other rights (Blau, 2016). Although the U.S. charged the latter as "socialist" and therefore refused to ratify the ICESCR, it held that the rights of the ICCPR were already codified in the U.S. Bill of Rights and therefore ratified it (albeit grudgingly, bemoaning the threats international treaties pose to sovereignty; Blau, 2016).

As a treaty to which the U.S. is party *and* one more well-known for its centrality to the human rights canon, the ICCPR may be able to bridge the American Exceptionalist double standard where other international treaties have failed. Like CEDAW, the ICCPR is a major human rights treaty which has been ratified nearly universally, but unlike CEDAW, the U.S. is among those legally bound to obey the ICCPR (United Nations Office of the High Commissioner for Human Rights, 2017). Additionally, because the ICCPR is so foundational to the human rights corpus, the ICCPR may fare better than CAT and the IACHR at holding the failures of U.S. IPV laws accountable as human rights violations.

The ICCPR contains three major provisions which serve to bridge the double standard: (1) freedom from torture; (2) freedom from discrimination and to the equal protection of the law; and (3) access to effective remedy for rights violations. Each of these provisions correlates to major flaws in U.S.

[6] The U.S. had claimed, even in the *Gonzales* case, that only harms by public actors in their official capacities are veritable human rights violations (Bettinger-López, 2008).

IPV laws, respectively: (1) reductive definitions of IPV which fail to hold batterers accountable for the totality of their abuse; (2) institutional failures to respond to systemic oppression, thereby frequently leaving non-paradigmatic victims without recourse; and (3) proposed remedies which undercut survivors' autonomy, too often lead to her arrest, and focus on separation to the exclusion of other solutions. Figure 2 depicts these connections.

Reductive Definitions Violate Battered Women's Rights to Freedom from Torture

Physical violence is only one of the tactics batterers use to establish power and control over their victims. As previously depicted in the Power and Control Wheel (Figure 1), IPV encompasses an array of tactics and abuses, many of which rise to the level of torture. Therefore, in order to understand the totality of a woman's experience of abuse and provide her with remedy, it is critical to understand that IPV is far more than physical battering.

The law, however, can fail to recognize this. Emotional, financial, psychological — and sometimes even sexual — abuse is frequently excluded from legal and statutory definitions of IPV (Goodmark, 2012). Missouri law, for instance, defines "domestic violence"[7] as the crimes of assault, battery, coercion, harassment/stalking, sexual assault, and/or unlawful imprisonment (Revisor of Statutes, State of Missouri, 2016). Although this statute is somewhat impressive compared to other states' for including stalking and sexual assault, it still falls far short of a holistic definition of IPV: there is no statutory language to contextualize — even if not to criminalize — the many other abuse tactics of IPV.

This omission may appear to be a small oversight, but it poses a significant obstacle for survivors of IPV seeking remedy. Without a more inclusive definition, the complex dynamics of an abusive relationship can be reduced in court to a set of sporadic, unconnected episodes of physical and/or violence, disregarding their coercive circumstances because that is all the law addresses and therefore all that is admissible at trial (Buel, 2003; Meyersfeld, 2003; Goodmark, 2004; Tuerkheimer, 2004; Goodmark, 2012; Jacobsen & D'Orio, 2015). For instance, attorneys representing the victim may face difficulties trying to submit evidence which depicts the batterers' prior abuse or those abuse tactics not listed in the statutory definition because it could be considered an "assassination of character" (Buel, 2003; Tuerkheimer, 2004). This myopic perspective leads victims' testimonies to appear incoherent and their fear to be over-exaggerated as they recount what are non-representative and disjointed incidents

[7] Missouri has no laws specifically addressing or defining IPV, only those for "domestic violence" at large, a problem in itself.

presented as entire stories (Buel, 2003). Juries are therefore likely to disregard or discredit such testimony because "what she's saying makes little sense, despite the fact — indeed, because of it — that her testimony is simply conforming to legal structures that deform her story" (Tuerkheimer, 2004, p. 986). Thus, reductive definitions fail to hold batterers accountable, perpetuating and exacerbating IPV.

This failure constitutes a human rights violation. By creating a narrow definition for IPV which addresses only a fragment of the victim's experience, the law fails to address the totality of her abuse. The state's consequent failure to act in the victim's defense serves as de facto sanction since that state inaction is critical to the continued harm of private torture. As: (1) Article 7 of the ICCPR declares that "no one shall be subject to torture or to cruel, inhuman or degrading treatment" (Office of the High Commissioner for Human Rights, 1966); (2) IPV, as private torture, is "cruel, inhuman, or degrading treatment"; and (3) international human rights law, by the due diligence standard, holds states accountable for private harm when the state fails to take appropriate measures to protect the victim; then the state's tacit enabling of private torture through reductive redefinition[8] of IPV is a human rights violation under the ICCPR. The mere existence of laws criminalizing IPV is not sufficient to defend human rights if their reductive definitions fail to truly address the abuse or protect battered women.

Sex & Intersectional Discrimination Violate Battered Women's Equal Protection Rights

One of the major challenges the BWM faced when increasing public attention to IPV was the bulwark defense in society's collective conscience to keep irksome, inconvenient thoughts at bay: IPV is a terrible thing, but it happens to "them," not us. Centuries of racist, capitalist, patriarchal control had generated a stereotyped image of battered women as poor women of color (WoC) who lived in bad neighborhoods and who had likely done something to "deserve" such violence against them (Goodmark, 2008; Goodmark, 2012). Clearly, the upstanding genteel folk of proper society should not concern themselves with issues plaguing only that ilk.

[8] This is not the first time the U.S. has attempted to redefine an action in order to conceal or minimize a human rights violation. Consider, for instance, how under the Bush administration, the CIA used "enhanced interrogation techniques" against enemy combatants. These tactics were considered torture against prisoners of war by the international community— a major human rights violation under CAT and the Geneva Convention— but, by a mere act of euphemistic redefinition, they were considered entirely legal by the U.S., if a bit morally dubious (Ackerman et al., 2014; Ashkenas et al., 2014; Laughland, 2015). Similarly, the reductive redefinitions of IPV which excessively emphasize physical violence, rather than representing the totality of abuse, attempt to obscure the human rights violation which enables private torture. Like official torture in the War on Terror, however, even if the law does not consider many of the non-physical acts of abuse to criminally be IPV, their definition (or lack thereof) as such does not change the very real fact that they *are*, in fact, central to the abuse and ipso facto the "private torture."

The BWM challenged that stereotype in favor of a new image of the paradigmatic victim: “a passive, middle-class, white woman cowering in the corner as her enraged husband prepared to beat her again” (Goodmark, 2012, p. 55). She does not fight back; she is scared, powerless, submissive, vulnerable, ashamed, fragile, dependent, and unassertive; she wants to leave her abuser but simply does not know how, and she will cooperate with the legal system against her batterer at the first opportunity (Leonard, 1997; Fenton, 1998; Heckert et al., 2000; Buel, 2003; Goodmark, 2008; Goodmark, 2012). Suddenly, the BWM did not just have a face, it had a face that was poignant and familiar — it was the face of someone you cared about, because the next victim “could be your mother/sister/daughter” (Goodmark, 2012). The familiarity galvanized society into action in a way altruistic humanitarianism for the perceived “other” could not. However, it also reified stereotypes of femininity predicated on gendered passivity and centered those stereotypes within the legal system’s response to IPV. This institutionalized (again) sex discrimination, a human rights violation.

Ultimately, this depiction served the aims of dominance feminists who argue men create a system of laws to maintain the subordination of all women equally and, therefore, sex should be prioritized over other social identities. Dominance feminists posit victims of IPV, as women, all share certain fundamental, “essential,” experiences which usurp their experiences from other systems of oppression. Ergo, BWM activists and legal system actors need not respond differently to a poor, immigrant WoC than to a middle-class, White woman with citizenship (Buel, 2003; Kasturirangan et al., 2004; Goodmark, 2009b; Goodmark, 2012;).

This approach has been repeatedly challenged by anti-essentialist feminists who reject that all women suffer equally. Anti-essentialist feminists contend any approach which fails to appreciate the effect of intersecting systems of oppression both reinforces those oppressions and is incapable of providing real assistance to non-paradigmatic, underrepresented women marginalized by more oppressions than just patriarchy (Fenton, 1998; Kasturirangan et al., 2004; Goodmark, 2008; Chavis & Hill, 2009; Goodmark, 2009b; Goodmark, 2012; Choudhury, 2015). Since dominance feminists continued to represent the White, middle-class face of the BWM, however, it was dominance — not anti-essentialist — feminism which was enshrined in the legal system’s response to the BWM. The consequent pointed refusal to address intersecting systems of oppression fails to uphold equal protection, a human rights violation.

Sex Discrimination

Three separate provisions of the ICCPR (1976) explicitly address freedom from sex discrimination as a human right. Article 2.1 holds that states must protect the rights of all its citizens "without distinction of any kind, such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status." Similarly, Article 26 guarantees all persons "equal protection of the law"; it also holds "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as" the aforementioned protected identities. Additionally, Article 3 exclusively addresses sex discrimination, holding that states must "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." Sex discriminatory under-enforcement of IPV laws violates each of these provisions (Office of the High Commissioner for Human Rights, 1976).

Men's violence against women, such as IPV, inherently serves to reinforce the sex-based hierarchy and rises to the level of formal sex discrimination when condoned by legal system actors. IPV, at its root, stems from the idea that women— particularly romantic or intimate partners — are men's sexual property and therefore theirs to dispose of as they see fit (Copelon, 2003; Chancer, 2004; Franks, 2016). Over time, this idea has become steeped into the culture such that violence against women is glamorized, trivialized, normalized, and justified (Chancer, 2004; Goldsheid, 2006; Chavis & Hill, 2009; Franks, 2016). Once this outlook on violence against women is then institutionalized, formal legal systems and sociocultural systems reinforce each other to perpetuate IPV by enabling IPV and refusing to punish batterers (Meyersfeld, 2003; Tetlow, 2009; Tuerkheimer, 2004). Carol Jacobsen & Lynn D'Orio (2015), directors of the Michigan Women's Justice and Clemency Project, write that "gender-biased institutions, public officials, and laws...sustain the [sociocultural] ideologies of women's subjugation and produce ongoing violence" (p. 3). As a result, the state tacitly condones IPV through state inaction and systemic under-enforcement, both of which serve to constitute sex discrimination under the ICCPR (Leonard, 1997; Buel, 2003; Copelon, 2003; Meyersfeld, 2003; Goldscheid, 2006; Tetlow, 2009; Franks, 2016; Goodmark, 2012; Human Rights Clinic at University of Miami School of Law et al., 2014; Jacobsen & D'Orio, 2015). Ergo, the state's sex discriminatory under-enforcement permits sex discriminatory violence to continue.

A foundational issue which is both a cause and a symptom of that under-enforcement is the legal system's blind acceptance of victim stereotypes which portray battered women as docile, powerless, and utterly passive. This trope codifies the culturally patriarchal notion of the meek and obedient feminine while suggesting that angry women, women who fight back, and other women who

display more agentic attributes are not "real victims" (Goodmark, 2009b; Goodmark, 2012; Franks, 2016). Incontrovertibly, there are survivors of IPV whose experiences fit within the narrow confines of this trope, but if *only* their experiences are seen as "real," then a vast swath of survivors' experiences are delegitimized (Goodmark, 2009b; Goodmark, 2012). Consequently, while the passivity trope validates a subset of survivors' stories — facilitating their access to the legal system — it simultaneously impedes the ability of non-paradigmatic victims (who do not conform to the trope) by crafting legal responses to IPV solely around the experiences of paradigmatic victims (Goodmark, 2009b; Goodmark, 2012). Non-paradigmatic victims too often therefore face the unwinnable dilemma of either editing and redacting their story to fit the passivity trope in order to access the services and supports of the legal system, or then refusing to distort the truth and potentially foregoing that access altogether (Goodmark, 2012). This institutional denial of access for insufficiently "feminine" victims constitutes sex discrimination under the ICCPR, as it is under-enforcement of the law based on the legal system's blind acceptance of women's stereotypical passivity.

Sex discrimination through under-enforcement also takes the form of victim-blaming. Too often legal system actors initially and repeatedly ask survivors of IPV "why didn't you leave?". Such questions insinuate the battered woman herself caused the abuse or "deserved it" for "choosing" to stay in the relationship[9] (Hart, 1993; Buel, 2003; Goodmark, 2004; Goldsheid, 2006; Goodmark, 2012; Stein & Miller, 2012; Choudhury, 2015; Franks, 2016). Victim-blaming thus re-victimizes survivors and discourages them from seeking the services and support of the legal system by implying the system will be reluctant to act in their defense (Hart, 1993; Meyersfeld, 2003; Goodmark, 2004; Goldscheid, 2006; Tetlow, 2009; Choudhury, 2015; Jacobsen & D'Orio, 2015). Victim-blaming also manifests itself as law enforcement officials' apathy to IPV, police and judicial disregard for the gravity and urgency of IPV, undercharging batterers or dropping the case against them entirely, and/or inadequate assistance of counsel when battered women's attorneys buy into victim-blaming myths and therefore misrepresent their client's case (Buel, 2003; Meyersfeld, 2003; Tetlow, 2009). Each of these byproducts of victim-blaming is a form of sex discriminatory under-enforcement, a violation of human rights under the ICCPR.

[9] Victim-blaming within the legal system is another example of how social norms and institutional practices reinforce each other, too often to the detriment of justice. A study by Stein & Miller (2012) found that two-thirds of the general public believes women can leave abusive relationships, and 25 percent think survivors *want* to be abused. Because these victim-blaming myths are so widely accepted, they are carried within the individual, often implicit, prejudices of legal system actors and thereby create institutionalized victim-blaming. Furthermore, the institutionalized practice then percolates outside of the formal sector when those actors leave work and go home and therefore appears to vindicate the socially-accepted victim-blaming practice, creating a vicious cycle.

Intersectional Discrimination

Since dominance feminists won out over anti-essentialist feminists for the ear of the legal system during the 1970s, they successfully painted the BWM with the face of a White, middle-class woman. The continued institutional response to IPV therefore centers this woman's experience but pointedly ignores intersecting systems of oppression. Without approaches sensitive to multiple oppressions, however, the legal system cannot appropriately understand or respond to the abuse non-paradigmatic victims face, and this serves to silence, invisiblize, and subjugate those experiences (Buel, 2003; Kasturirangan et al., 2004; Goodmark, 2012; Choudhury, 2015; Martin, 2015). Goodmark (2012) wrote this essentialist approach "both highlights and exacerbates the economic and social marginalization experienced by women with other identities" (p. 75). The result is that the legal system's response to IPV — in addition to constituting sex discrimination — also bolsters institutional discrimination on the basis of other identities, including race, class, immigration status, ability, age, sexual orientation, gender identity, etc. (Meyersfeld, 2003; Goodmark, 2012; Jacobsen & D'Orio, 2015). Therefore, when the legal system fails to minimize the harms done by classist/racist/nativist/etc. barriers, it condones those forms of oppression and becomes a human rights violation. The additional barriers to the legal system which poor women, WoC, and immigrant women face merit particular consideration since they are explicitly protected identities in the ICCPR (see: Office of the High Commissioner for Human Rights, 1966).

Socioeconomic Status

Low-income women are at a higher risk for abuse for a number of reasons. Some studies suggest rates of IPV correlate with couples' financial strain: batterers may feel impotent outside the home as a result of their unemployment status or low-paying, menial job and therefore seek to reassert control over their lives through displays of dominant masculinity, which too often take the shape of IPV (Goodmark, 2012; Zelcer, 2014). Additionally, financial constraints can economically bind women to their partners, making it more difficult for them to leave abusive relationships. While women in high-paying jobs may have savings or insurance which could ease the separation process, low-income women who depend on their partner's income for basic necessities can run the risk of homelessness or abject penury if they leave (Chavis & Hill, 2009; Goodmark, 2012).

The state also takes insufficient steps to rectify this disparity by providing comparable resources for low-income women, in no small part because low-income women are less able to appeal to the legal system for support and services in the first place. Although feminist activists long pushed for the legal

system to be accessible to battered women without legal representation, it remains difficult to navigate independently. For instance, the BWM pushed for battered women to be able to petition for civil protective orders (CPOs) against their batterers without legal counsel, but the process remains neither as swift nor as simple as battered women's advocates wished and attorneys are still largely necessary (Goodmark, 2004; Goodmark, 2012; Magill et al., 2015). Further, low-income women have access to fewer resources— such as the funds necessary to pay for quality attorneys — and are thus less likely to be able to take full advantage of the services offered by the legal system (Buel, 2003; Goodmark, 2004; Chavis & Hill, 2009; Goodmark, 2012; Zelcer, 2014). The consequent institutionalized failure of the system to respond to battered women because of their socioeconomic ("property") status is a violation of the ICCPR's provisions against discrimination and for equal protection.

Race

Because of the heavy weight of longstanding historic and continued racism in the U.S., WoC are doubly marginalized by the intersection of their identities. For instance, the passivity trope has become heavily racialized. WoC — particularly Black women — are less likely to be seen as "passive" or "docile" because racial stereotypes tend to portray them as angry, confrontational, aggressive, vengeful, and promiscuous (Fenton, 1998; Jacobsen & D'Orio, 2015). White women are more easily able to fit the confines of the passivity trope, while WoC must "prove" themselves to be victims before they may obtain justice (Fenton, 1998). In the same way that the passivity trope constitutes sex discrimination under the provisions of the ICCPR, the trope's racialization constitutes racial discrimination.
Women of color — like many communities of color as a whole — are also less likely to turn to the criminal justice system for legal remedy due to a culture of distrust stemming from institutionalized racism. Prior negative interactions with the criminal justice system discourage WoC from seeing legal system supports as designed to assist them, rather than only White women (Fenton, 1998; Buel, 2003; Goodmark, 2004; Goodmark, 2008; Chavis & Hill, 2009). Before dialing 911, WoC weigh the potential benefits of police intervention with the threat of police brutality, and even the most desperate victims may therefore decide 911 is not a viable avenue for safety (Fenton, 1998; Buel, 2003; Goodmark, 2012; Zelcer, 2014). WoC who do try to utilize these resources may also face stigmatization in their communities in light of the "community ethos not to rely upon principally, white, disconnected institutions" (Buel, 2003, p. 10). Each of these impediments to justice which WoC — but typically not White women — face on the basis of their racial identity is a form of racial discrimination according to the principles of international human rights law.

Immigration Status

Immigrant women also face unique barriers to justice. Undocumented women may fear deportation if they call on law enforcement officials to intervene and may thus be forced to remain in abusive relationships or face forcible deportation (Goodmark, 2004; Kasturirangan et al., 2004; Chavis & Hill, 2009; Goodmark, 2012; Zelcer, 2014). Batterers may also threaten to inform immigration officials to the victim's whereabouts to ensnare battered women and prevent them from leaving (Lockhart, 2017). In fact, 2017 has seen a spate of immigrant women drop cases of abuse against their batterers out of fear of being deported in light of recent executive orders and memoranda removing protections for battered immigrant women against deportation[10] (Lockhart, 2017). Even women who have legally immigrated — and do not fear deportation — may face language barriers or be disconnected from the communities around them, increasing their isolation from potential resources and preventing them from being able to contact legal system actors (Kasturirangan et al., 2004; Chavis & Hill, 2009). Again, it is the state's failure to provide resources which attempt to break down — or, at the very least, mitigate — barriers battered women face on the basis of their social identities, violating their rights to freedom from discrimination and to equal protection under the ICCPR.

Legal System Solutions to IPV Violate Battered Women's Right to Effective Remedy

Article 2.3(a) of the ICCPR obliges states "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy" (Office of the High Commissioner for Human Rights, 1966), yet IPV laws in the U.S. systematically violate these rights. Not only do the aforementioned sex-, class-, race-, and immigration-based discriminatory barriers violate battered women's right to effective remedy by denying them access to the legal system (making access to effective remedy practically impossible), fruitless police and judicial responses to IPV also fail to protect the right to effective remedy. Mandatory arrest and no-drop prosecution policies — the rote responses to IPV — undercut battered women's autonomy and not infrequently lead to the dual arrest of battered women alongside their abusers. Responses to IPV also unduly emphasize battered women separate

[10] The Violence Against Women Act created special protections in 2000 for immigrant victims of IPV through the U-Visa program which "help victims live independently of their abusers by providing them with work authorization and temporary legal status on the condition that they assist law enforcement in any related investigation" (Lockhart, 2017, para. 6). The act also prevents immigration officials from using information from abusers to deport IPV victims, unless she has been convicted of serious crimes (Lockhart, 2017). Agencies under the Trump administration are rescinding many of these protections, however, leaving many undocumented battered women without recourse and spurring the spate of dropped IPV cases (Lockhart, 2017).

from their partner, which leaves women who wish to remain in the relationship — but still end the abuse — without recourse. This is particularly troubling considering separation can actually *escalate* the level of abuse. When responses to IPV fail to effectively remedy the abuse to the satisfaction of battered women, and in fact actively exacerbate the harm they face, it violates their human rights under the ICCPR.

Mandatory Arrest and No-Drop Prosecution Policies

Despite the early successes of the BWM at consciousness-raising and implementing legal protections for battered women, victim- blaming remained rampant in the legal system. As a result, police often failed to intervene when called to respond to IPV and, even when batterers *were* arrested, they were unlikely to spend any time behind bars (Goodmark, 2004; Goodmark, 2012; Zelcer, 2014). Police officers' typical response to IPV was for the abuser to "take a walk around the block" and "cool down," as IPV was considered a mere "lover's quarrel" not subject to police interference (Pagelow, 1992; Goodmark, 2004). To demand responses, the BWM actively pushed for mandatory arrest policies which would remove an individual officer's ability to decide if IPV was an arrest-worthy crime (Goodmark, 2004; Goodmark, 2012; Bonanno, 2015). These policies also empowered officers to make an arrest without having a warrant or witnessing the crime so long as they had probable cause to believe IPV occurred (Goodmark, 2004; Goodmark, 2012). BWM activists hoped mandatory arrest policies would also take the onus of pressing charges against batterers off victims, increasing accountability for IPV (Bonanno, 2015). These policies brought unprecedented numbers of batterers into the criminal justice system for their abuse (Bonanno, 2015; Goodmark, 2004). Arrests alone, however, could not hold batterers accountable when prosecutors, skeptical of the exigency of the abuse and holding firmly to patriarchal and victim-blaming myths, consistently dropped the cases against batterers. The BWM therefore pushed for no-drop prosecution policies to largely remove prosecutors' discretion to refuse to charge batterers (Goodmark, 2012; Komanski & Magill, 2015). No-drop prosecution policies also made it more difficult for batterers to coerce their victims into having prosecuting attorneys drop the case against the batterer (Goodmark, 2004). Both policies were thus designed to theoretically increase the enforcement of laws criminalizing IPV in the hopes of holding more batterers accountable for the abuse.

This theory fails to consider, however, that when these policies remove police and prosecutorial discretion to refuse intervention, they also remove the victim's discretion to decide whether or not she wants the batterer arrested and/or she wants to participate in the criminal justice system. This practice undermines her autonomy. BWM activists, in no small part, lobbied for these policies on the essentialist

basis that the arrest and prosecution of batterers was *always* the appropriate response, and battered women who disagreed only thought so because the extreme psychological abuse they had suffered had warped their perception of the batterer (Raeder, 2006; Goodmark, 2009a; Goodmark, 2009b; Zelcer, 2014). This approach is both infantilizing and patronizing as it assumes women who assert their independent will for their batterers not to be arrested are irrational, reifying the paradigm of the helpless victim (which has previously been discussed to contribute to sex discrimination). It also pointedly ignores the realities of battered women's situations. For instance, battered women may fear retaliatory violence. They may also depend on their partners for financial or other resources, so his arrest could lead to her and her children's eviction from the home, loss of food, and overall destitution (Goodmark, 2009a; Leonard, 1997). As a result, these policies can actually *disincentivize* battered women from calling the police to intervene in abusive situations because doing so may start them down a path from which they cannot later withdraw, even when it results in active harm against them (Zelcer, 2014).

Mandatory arrest policies are also injurious in that they can lead to dual-arrests. If battered women fight back, police officers may equate their violence as equivalent abuse to the IPV — rather than actions taken in self-defense — and arrest them alongside their batterers (Buel, 2003; Goodmark, 2004; Goodmark, 2012; Zelcer, 2014). Dual-arrests also disproportionately affect WoC (Goodmark, 2012; Zelcer, 2014) who are stereotypically presumed to be more aggressive and hostile (Fenton, 1998). This phenomenon violates battered women's human right to effective remedy by criminalizing their attempt to access the legal system — and contributes to racial discrimination when it draws on racial stereotypes in its disproportionate enforcement.

Research studying the efficacy of mandatory arrest policies on reducing batterers' recidivism are ambiguous at best, suggesting that even if mandatory arrest and no-drop prosecution policies did not undercut autonomy and lead to dual-arrests, they still *do not decrease* incidences of IPV (Zelcer, 2014; Feder & Gomez, 2015). Supposed solutions which cannot resolve the issue of IPV or provide justice for survivors serve little to no purpose as "remedies" and cannot respect the ICCPR's mandate for effective remedy.

Separation-Based Policies

Again based on the presumption BWM activists knew better than battered women which solutions to IPV would be best, BWM activists contended separation from abusers was the only appropriate solution to IPV. This presumption is demonstrably false. Battered women — for a spate of

reasons including feeling responsible for the abuse, believing the batterer can and will change, economic dependency because of batterers' financial abuse, batterers' isolation tactics which deprive them of social supports outside the relationship, and fear of retaliatory violence — may not wish to separate from their partner (Leonard, 1997). Policies which exclusively seek to sever the abusive relationship provide no recourse for these women who do not wish to separate (Goodmark, 2004; Goodmark, 2012). Nonetheless, legal system actors continue to recommend battered women divorce their abusers and take out protective orders against them, while rarely recommending counseling or shelter services (Goodmark, 2004). Thus, pushing separation, without regard to alternatives or their consequences, fails to ensure safety.

Even for those survivors who do seek to end the relationship, separation-based solutions alone do not necessarily guarantee safety. For one, a growing body of research addresses the widespread phenomenon of post-separation violence: the escalation of abuse against survivors who leave their batterers. Separation can enrage batterers, such that women who leave their batterers are actually at a *higher* risk of being murdered by their batterers than women who remain in the abusive relationship, particularly in the first two months of separation (Buel, 2003; Humphreys & Thiara, 2003a; Brownridge, 2006; Goodmark, 2012; Stein & Miller, 2012). For another, permanent separation solutions like divorce can also be economically destabilizing and — coupled with child custody rights that continue to give the batterer access to the family — escalate post-separation violence (Goodmark, 2012). Other options, like arrest or CPOs, can make it temporarily more difficult for batterers to contact their victims, but they provide no permanent separation solutions that would also facilitate long-term survivor safety (e.g. temporary housing, financial support, health, care, etc.) (Dobash & Dobash, 2000; Goodmark, 2012; Feder & Gomez, 2015).

As a result, for women who wish to separate from their abuser, the legal system's responses are notoriously subpar and flawed; for women who do not wish to separate from their abuser, the legal system's responses are essentially nonexistent. Goodmark (2012) wrote:

> For women who want to separate, then, the tools that the legal system offers aren't always effective. That those tools fail to live up to their promise is a critical problem for women who want to use them. That those remedies are, by and large, the only things that women subjected to abuse are offered in a society that disproportionately relies on the legal system to address [IPV], is tragic (p. 96).

Legal system responses which can provide limited reparatory power for a narrow subset of survivors of IPV— while offering little to no support or services to a not-insignificant population of survivors— violates battered women's human rights to effective remedy under the ICCPR.

Conclusion

International scholars identify gender-based violence such as IPV as among the most egregious human rights violations. Because of the horrific nature of the abuse, victims are unable to fully enjoy their other human rights. Even though the U.S. has hesitantly embraced using the language and mechanisms of human rights internationally, it remains critically important to bridge the American Exceptionalist double standard which refuses to treat the failures of U.S. IPV law with their due gravity as human rights violations. The ICCPR can be the tool by which to reconceptualize IPV in a human rights framework, since CEDAW, CAT, and the IACHR have produced mixed results. Its provisions for freedom from torture, equal protection and freedom from discrimination, and effective remedy protect battered women from reductive definitions of IPV which facilitate continued private torture, tropes of victimhood and intersectional systems of oppression, and ineffective legal system solutions to IPV, respectively. These same principles can be applied also to other types of relationships. For non-heteronormative relationships, although the different gender dynamics would influence the application of sex discrimination principles, the fundamental theories framing human rights in local laws remain the same. Additionally, this paper did not mention the effects of intersectional oppressions through religion, age, ability status, sexual orientation, or gender identity on IPV, but each pose barriers to justice which also violate the anti-discrimination and equal protection provisions of the ICCPR. Further research in these areas would continue to work to bridge the American Exceptionalist double standard and provide justice and human rights for all.

Thusly, reconceptualizing IPV within a framework of human rights is critical to rectifying the harms of IPV law in the U.S. The internationally-accepted mechanisms of human rights can address the failures of IPV law with due gravity as the insidious, ubiquitous, and destructive violations they are. Without this reconceptualization, the U.S. can continue to shirk its duties to respond to IPV, protect battered women, and hold batterers accountable. Using the ICCPR as a framework of human rights within which to reconceive of IPV can provide the impetus for much needed reforms of U.S. laws which systematically violate battered women's rights, creating a freer and more just society.

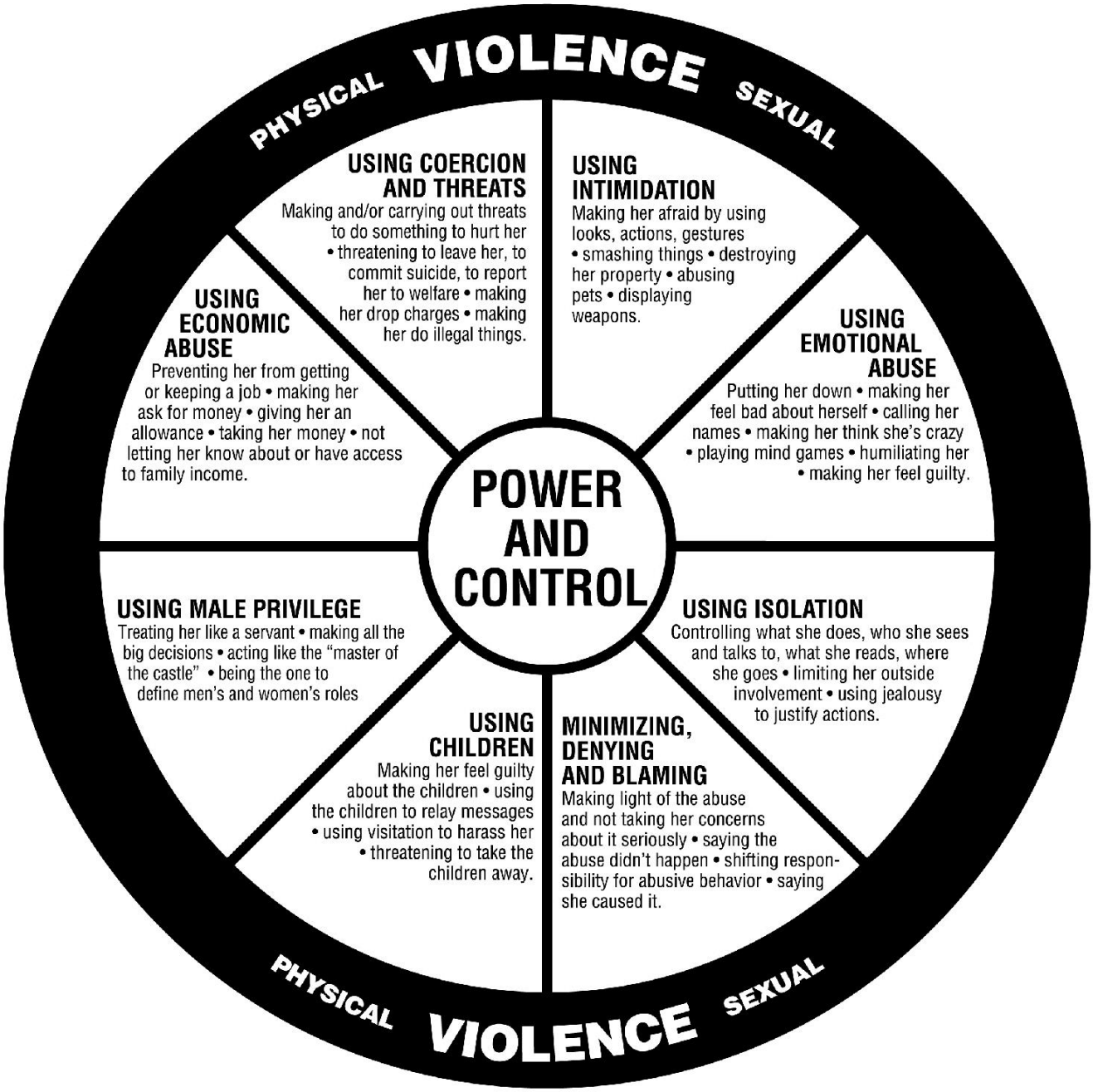

Figure 1. Power and Control Wheel (DAIP, 2011)

Failures of IPV Law in the U.S. as Human Rights Violations under the ICCPR

ICCPR Provision	Human Rights Violation
Freedom from Torture Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."	Reductive legal definitions of IPV which fail to address the totality of abuse, thereby enabling batterers and tacitly sanctioning "private torture."
Freedom from Discrimination Article 2.1: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 3: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." **Right to Equal Protection of the Law** Article 26: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."	**Sex Discrimination** Men's violence against women is inherently sex discrimination. When the state tacitly endorses the violence through sex discriminatory underenforcement (by blindly accepting passivity tropes of battered women and engaging in victim-blaming practices), it constitutes sex discrimination. **Intersecting Systems of Oppression** Socioeconomic Status: Low-income women are at an increased risk for abuse and are also less likely to be able to access legal resources, creating "property" status-specific barriers. Race: The racialized aspects of the passivity trope insinuate women of color are not real victims of violence, and the longstanding weight of institutionalized racism make it difficult to access services and systems within the legal system, creating race-based barriers. Immigration Status: Undocumented women fear deportation if they seek support from the legal system and may, therefore, be forced to remain in abusive relationships. Even women not at risk of deportation may face language barriers or isolation within their communities. These barriers make it more difficult for battered women, on account of their "national or social origin," to access the legal system.
Right to Effective Remedy Article 2.3(a): "Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,	Mandatory arrest and no-drop prosecution policies undercut battered women's autonomy and too often lead to dual arrests. Proposed solutions which focus on separation to

notwithstanding that the violation has been committed by persons acting in an official capacity”	the exclusion of other solutions can provide no remedy for women who do not wish to separate from their batterers.

Figure 2. Failures of IPV law as Human Rights Violations under the ICCPR

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