

Marginalized and Abused: The Increased Vulnerability of Latina Immigrants

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Abstract

Existing research on domestic violence often fails to recognize factors beyond gender that increase vulnerabilities to abuse. This paper examines domestic violence as a human rights issue, using Latina immigrants in the United States as a case study. Through the use of feminist theoretical frameworks, domestic violence can be understood as a human rights issue with implications for governments. In addition to cultural traits unique to the Latino population, there are also a multitude of other obstacles facing abused Latinas: isolation, language barriers, violent political situations in their countries of origin, the U.S. legal system, economic disparities, and lack of educational opportunities. The U.S. government's failure to protect Latina immigrants in abusive relationships violates several articles within the Universal Declaration of Human Rights (UDHR). As the duty-bearers of human rights, governments are responsible for implementing policies that protect vulnerable groups and upholding rights – even if abuse occurs at the hands of individuals. By recognizing domestic violence as a human rights issue, as well as acknowledging the particular vulnerabilities of Latina immigrants, steps can be taken to alleviate this problem.

Domestic violence is widely viewed as a human rights issue that disregards the boundaries of race, class, sexual orientation, and age. Wilson (2006) explains: "If anything is truly equal opportunity, it is battering. Domestic violence...crosses all lines" (p.15). Some experts argue that the factor most strongly indicative of an individual's increased risk of experiencing intimate partner violence is gender. A 2001 U.S. Department of Justice report noted that of the approximately 700,000 non-fatal, documented

violent acts which occurred between current or former intimate partners, 85 percent were cases of women being attacked by men (Wilson, 2006).

Though gender is regarded as the strongest factor for determining vulnerability to domestic violence, this article contends that Latina immigrants face additional challenges that must be considered and confronted. In the United States, Latina immigrants who are in abusive intimate relationships encounter numerous cultural, institutional, and structural barriers which fail to protect them. These obstacles further the grave human rights violations they experience. While domestic violence is not unique to any particular group, Latina immigrants face specific challenges. As Audre Lorde writes, “the oppression of women knows no ethnic nor racial boundaries, true, but that does not mean it is identical within those differences” (Wilson, 2006, p. 120).

In order to assess the vulnerabilities to domestic violence experienced by Latina immigrants, this paper proceeds as follows: First, it explains why intimate partner violence is a human rights issue. Second, it analyzes the intersecting challenges faced by Latina immigrants that increase their vulnerabilities to abuse and human rights violations. These issues are often related to cultural practices and the realities of immigration. The third section explains the U.S. government’s duty to protect victims of domestic violence using the precedents of political asylum claims, as well as international human rights law and theory regarding state responsibility. Finally, recommendations for mitigating these obstacles to full human rights protection are provided.

Intimate Partner Violence as a Human Rights Violation

This section confronts domestic violence as both a women’s rights issue and human rights issue. It examines the minimization of the severity of domestic violence and why this is an inaccurate portrayal

of this issue. Domestic violence's minimization led to its categorization as a women's issue, as opposed to a human rights issue; this section explores the consequences of this categorization. This section also explains the importance of recognizing the patriarchal aspects of current human rights discourse which limit the protection of women's human rights; Feminist theory illustrates how human rights limitations can be remedied so that women are better protected. The impact that women's rights advocacy had on the international recognition and framing of domestic violence, along with an analysis of what this means for states, concludes this section's explanation of domestic violence as a human rights issue.

There has been a tendency for many years in international human rights discourse to mitigate the egregious nature of intimate partner violence. With the exception of acts of domestic violence that are exceedingly sadistic or depraved, the public's perception of assaults against women is that the violence is not serious or severe (Copelon, 1994). This perception is not unique to intimate partner violence; it is common to most women's issues. For example, survivors of rape are often perceived as having experienced a mitigated degree of violence, or no violence at all, if they are raped by an acquaintance, just as women assaulted by a partner are perceived as experiencing a mitigated degree of violence (Bartlett & Rhode, 2010). The tendency to minimize domestic violence by saying that it is somehow different than violence experienced during an assault on the street only perpetuates the notion that assaulting a woman who is your partner is permissive or even normal (Staudt, 2009).

This minimization of the severity of violence experienced by women becomes an even larger problem when one recognizes the high instances of serious injury and murder associated with intimate partner violence. In 2000, 1,247 women were killed by their intimate partners in the United States. This roughly equals three women murdered by an intimate partner every day for a year (Wilson, 2006). A study by the Centers for Disease Control and Prevention reported in 2008 that the leading cause of death among women ages 15-44 was domestic violence (Bartlett & Rhode, 2010). The same report finds

that the leading cause of death of pregnant women in the U.S. is also domestic violence (Bartlett & Rhode, 2010). Battery is a leading cause of injury among adult women in the U.S., with varying studies reporting that the frequency of assaults occurring in the home range from 40 to 80 percent of the time (Bunch, 2006). During its investigation of domestic violence in relation to the 1994 Violence against Women Act, the U.S. Congress estimated that 4 million women are assaulted by their intimate partner annually (Bartlett & Rhode, 2010). These statistics show the prevalence and serious nature of domestic violence, highlighting it as an issue of public concern.

Yet the minimization of violence is one reason why intimate partner violence was regularly misidentified as strictly a women's issue separate from human rights violations (Copelon, 1994). There are several consequences resulting from this categorization of domestic violence as a women's issue, rather than also a human rights issue. As Bunch (2006) explains, "the classification of human rights is more than just a semantics problem because it has practical policy consequences. Human rights are still considered to be more important than women's rights" (p. 63). For example, there are differences between the Human Rights Commission and the Commission on the Status of Women. Bunch (2006) notes that the Human Rights Commission "has more power to hear and investigate cases than the Commission on the Status of Women, more staff and budget, and better mechanisms for implementing its findings" (p.63). The comparison of these two commissions' resources and abilities to enact policies shows that when something is considered a human rights issue, there is more that can be done by the international community (Bunch, 2006).

It is important to address this discrepancy in order to protect the human rights of women. Bunch (2006) notes that "the human rights community must move beyond its male defined norms in order to respond to the brutal and systematic violation of women globally" (p. 63). Examining the impact of patriarchy in the development and application of human rights does not necessitate that all

human rights groups shift their focus to women-specific human rights issues. However, it is important to be open to a critical analysis of current human rights doctrine so that any examples of lingering patriarchal attitudes can be identified and remedied so that all human beings, regardless of sex, have their human rights protected equally (Bunch, 2006).

One way that scholars have attempted to remedy sexist aspects of current human rights doctrine is to develop feminist frameworks that broaden the definitions of traditional human rights issues; these definitions can include women's human rights issues such as domestic violence. For example, Copelon's (1994) theoretical framework compares and contrasts intimate partner violence and torture. She uses a basic analysis of torture to establish the ways in which the abuse of domestic violence can be seen in a similar light. For instance, she notes that the most common forms of physical torture used by governments involve no equipment at all and often employ the same methods used by abusive partners to inflict pain on their partner. These methods include kicking, beating, burning, mutilating sexual organs, and engaging in forced sexual acts. The psychological torture inflicted on prisoners of war has also been compared to the psychological abuse batterers use; torturers and abusers use "a combination of techniques designed to induce dependency, debility and dread and thereby break the personality" (Copelon, 1994, p. 125). Psychologists have even noted that the techniques used by abused women to live through their adverse conditions are survival methods comparable to those utilized by prisoners of war (Copelon, 1994). Notably, Copelon's labeling of domestic violence as a form of torture was a position supported by Amnesty International in 2001 (Merry, 2009). The premise of Copelon's argument is that the criteria used to define torture as a violation of human rights can also be used to define intimate partner violence. Domestic violence "must be seen as no less grave than other forms of inhuman and subordinating violence" (Cook, 1994, p. 13).

By the mid-1990s, a growing number of scholars began to recognize that women's rights were inextricably linked to human rights. However, this shift for inclusion in human rights discourse was due to global pressure from women as opposed to theoretical shifts such as the one proposed by Copelon (Fraser, 2006). Between 1975 and 1995, an unprecedented number of women activists began asserting that the abuses they suffered in the privacy of their homes needed public attention and action. Many of these women took on leadership roles, which gave women access to a public forum in which they could present the grievances they experienced privately (Fraser, 2006). As Fraser (2006) notes, "three World Conferences allowed an ever-growing mass of activist women to exchange experiences across national boundaries and form new international networks" (p.51-52). During these decades, the dissemination of electronic and print media allowed women leaders and advocates to communicate and educate one another with regards to the oppressions they suffered at the hands of patriarchy. Soon women had a public voice which governments and international bodies were pushed to recognize as a new constituency (Fraser, 2006).

International women's human rights conferences were reflective of the increasing pressure upon human rights advocates to accept and recognize gender-based abuse as a key issue of human rights (Peters & Wolper, 1995). One conference that illustrated the merging of human rights with women's rights was the 1993 World Conference on Human Rights in Vienna. Peters and Wolper (1995) write that activists at the Vienna Conference proclaimed that it was "no longer enough that existing human rights mechanisms were merely...extended to women: *women's rights must be understood as human rights*" (p. 3). The 1993 Vienna Declaration and Programme of Action that resulted from this conference declared that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights" (Fraser, 2006, p.53). It was at this point that some human rights scholars identified the division of women's rights and human rights as "defunct categories" (Peters and Wolper, 1995, p.3). The Convention for the Elimination of Discrimination against Women

(CEDAW), which focused on violence against women during its 1992 session, further expanded the meaning of women's rights as human rights (Fraser, 2006). CEDAW stated that discrimination against women violates their human rights, and that signatories of this convention had an obligation to protect women from discrimination and violence that occurred publicly and privately (Fraser, 2006).

When domestic violence is viewed as a human rights issue, it's easier to recognize that solutions are not based on changing the individual, but rather on changing the aspects of society that perpetuate gender inequality. In the U.S. and globally there is a tendency to perceive domestic violence as a private act outside of the public sphere's scope of responsibility. However, international documents such as CEDAW increasingly pressure states to recognize that domestic violence is structural violence against women perpetuated by patriarchy. Framing domestic violence as a structural form of discrimination against women establishes a connection between violence and gender that results in unequal protections of laws, which is a human rights violation in itself (Merry, 2009).

It is important to remember that the recognition of domestic violence as a human rights abuse does not mean that the problem is solved. Fraser (2006) explains that "although women's rights are now recognized as human rights, recognition does not mean implementation" (p.56). States need to go beyond recognition of domestic violence as a human rights violation and begin implementing policies and laws that will counter this oppression of women. It is of significant importance for governments to understand that the responsibility of stopping domestic violence does not rest solely in the actions and attitudes of the individual abusers; the state must acknowledge that they are responsible for shaping how the government reacts towards instances of domestic violence. Until governments take on this responsibility, the prevalence of domestic violence will not diminish and women's human rights will continue to be violated. Furthermore, governments need to go beyond focusing on a generalization of

women's oppressions and be aware of other circumstances that increase the vulnerability of marginalized populations, including Latina immigrants.

Domestic Violence, Latino Culture and Immigration

Understanding the experiences of abused Latina immigrants and their increased vulnerability is a complex task due to the fact that this population experiences numerous intersecting oppressions in varying degrees. The first part of this section describes domestic violence in general. It examines domestic violence statistics, as well as reasons for the limited amount of research concerning Latina immigrants and violence. The second part of the section discusses culture's impacts on abused Latina immigrants and how this relates to their vulnerability. In particular, this part focuses on cultural expectations in relation to gender and popular beliefs. The third part of this section examines immigration-related issues including isolation, language barriers, violent political situations in origin countries, the legal system, economic disparities, and lack of educational opportunities.

Domestic violence overview

Domestic violence is prevalent in the United States, yet the general population tends to be uninformed on this issue and an inaccurate perception of domestic violence is perpetuated. One popular myth is that women are just as abusive in relationships as men (Wilson, 2006). The reality is that female-to-male violence rarely leads to injury and is often committed as acts of self-defense provoked by an initial attack by a male. Even when some females are primary aggressors in their relationships, females assaulted by males experience higher rates of sustained physical injuries. Females who are assaulted by someone they have been intimate with are 13 times more likely than males to suffer injuries during the

confrontation, according to a 1994 American Psychological Association study (Welland & Ribner, 2008). A more recent study by the U.S. Department of Justice found women five to eight times more likely to be physically harmed in an intimate relationship than males (Wilson, 2006). Other studies found that female victims accounted for 85 percent of cases where intimate partner violence was reported in the U.S., while male victims accounted for 15 percent (Menjivar & Salcido, 2002).

The frequency in which domestically violent relationships end in death makes this issue not only a concern for women's human rights activists, but for the public in general. The Center for Disease Control and Prevention in 2003 found that approximately 2 million injuries and 1,300 deaths related to intimate partner violence occurred throughout the U.S. every year (Welland & Ribner, 2008). Females were much more frequently the victims of intimate partner violence related homicide than males. In 2002, 76 percent of intimate partner homicides involved a female murder victim (Welland & Ribner, 2008).

The risk of fatality for immigrant women in abusive relationships is higher than the risk for U.S. born women, due in part to a lack of community response; this is based on a 2002 study which focused on the prevalence of intimate partner violence murders and its relation to immigrant women. This report analyzed the number of annual female murders that occurred in New York City. Fifty-one percent of the immigrant women murdered were killed by an intimate partner, while 45 percent of the U.S. born women murdered were killed by an intimate partner (Wilson, 2006). A potential factor for increased lethal abuse experienced by immigrant women is failed community response. Intimate partner violence does not inevitably escalate to the point of murder. Wilson (2006) notes that "when intimate partner violence results in murder, it is often a reflection of the community's failure to recognize the severity and potentially fatal consequences of the problem" (p. 30).

Basic statistics help us to understand recent immigration to the United States, and provide hints about domestic violence within immigrant populations. A majority of immigrants to the United States are women (Narayan, 1995), and since the 1930s women and children have comprised the majority of documented and undocumented immigrants to the United States (Hass et al., 2000). Women and children make up two-thirds of the legal immigrant population currently in the U.S. (Wilson, 2006). The 2005 census estimated that Latinos made up 14 percent of the United States' national population without the inclusion of Puerto Rico. This makes the Hispanic population the largest and fastest growing minority group in the U.S. (Welland & Ribner, 2008). The number of non-Latina and non-immigrant women who experience abuse is equivalent to the number of Latina and immigrant women who have reported abuse (Menjivar & Salcido, 2002). However, Latina immigrants report remaining in abusive relationships for longer periods of time than Caucasian Americans. One study found that 48 percent of the Latina immigrants surveyed reported that there was an increase in the abuse their partner inflicted upon them after they immigrated to the United States (Hass, Dutton & Orloff, 2000).

Though there has been extensive research concerning the issue of intimate partner violence, there is very limited data related to immigrant women in general who experience abuse and even less information focused on Latina immigrants (Menjivar & Salcido, 2002). The only two studies found regarding this topic estimate the rate of intimate partner violence among all immigrant women to range from 77 percent to 90 percent (Narayan, 1995). There is no conclusive information that explicitly identifies what population is abusing Latina immigrants in the United States; studies included partners who abused before immigrating to the U.S., who were non-Latino, who were U.S. born, who were undocumented immigrants, as well as documented immigrants. Mail-order brides from Latin American countries were described as an immigrant population with a very high vulnerability to domestic violence, yet this population has been researched minimally (Narayan, 1995). Research concerning Latina immigrants has remained minimal due to the fact that domestic violence researchers tend to use

a theoretical framework which focuses on one oppression (patriarchy) as opposed to researching multiple oppressions which potentially increase the vulnerabilities for Latina immigrants.

Nearly every feminist theory concerned with the broad issue of intimate partner violence focuses on institutionalized patriarchy as the basis of all women's oppressions, which ignores oppressions uniquely experienced by Latina immigrants. The crux of this domestic violence research is the belief that patriarchy is the root of all discrimination towards women; perpetuating patriarchy, a sexist ideology, justifies men's power and control of women (Wilson, 2006). This framework is important for understanding the basis of intimate partner violence, but is problematic because it ignores other oppressions besides patriarchy which impact minority populations (Vidales, 2010). Ignoring particular oppressions uniquely experienced by marginalized groups also ignores underlying factors which tend to exacerbate their vulnerability in abusive relationships.

To understand the experience of Latina immigrants in abusive intimate relationships, another framework which identifies oppressions beyond patriarchy is necessary. For instance, it wasn't until 1994 that Crenshaw developed the first theoretical framework focusing on the intersectionality of multiple oppressions experienced by marginalized groups who suffer intimate partner violence, as opposed to a framework which limits its focus to generalized patriarchy and its implications (Vidales, 2010). Multiple oppressions need to be explored when researching intimate partner violence and Latina immigrants in order to determine the unique factors that are associated with this particular group's heightened vulnerability in domestic violent situations (Menjivar & Salcido, 2002). Vidales (2010) writes that "Latinas are invisible to the majority population carrying a great deal of the burden associated with poverty and inequality. This invisibility has ensured the absence of systematic data on Latinas and domestic abuse especially when it is experienced by immigrant Latinas" (p. 533).

There are several other reasons (besides a limited theoretical framework) which contribute to the lack of accurate data concerning the prevalence of intimate partner violence experienced Latina immigrants. Along the U.S. Mexican border, for instance, the issue of “femicide” in border towns like Ciudad Juárez is the focus of women’s rights activists and has shifted some research focus (Staudt, 2009). The term has meant “the killing of women” for more than 200 years, and it has also been equated with the Spanish *feminicidio* or “female genocide.” Many scholars link this concept to a hatred of women, with murder implying a sense of superiority and empowerment over women – often including sexual cruelty (Mueller, Hansen, & Qualtire, 2009).

In some cases it is difficult to tell if a victim of femicide was also a victim of intimate partner violence, or if the murder was committed for other reasons (Staudt, 2009). Staudt (2009) notes “paradoxically, feminist and human rights activists initially also muted attention to intimate partner violence” and that “tension arose over whether to prioritize femicide or violence against women generally, including domestic violence” (p. 123). Groups promoting awareness and accountability over the issue of femicide tend to over-report female murders as instances of femicide, while the government, to protect its image, under-reports female murders that should be considered instances of femicide; as Merry (2009) explains, “the statistics are a political football” (p.121).

Accurate data is also hard to collect and assess because many Latina immigrants are uncomfortable revealing personal information. Several factors may impede a woman from fully disclosing the details of her situation, including: embarrassment, fear of reprisals, language barriers, fear of deportation, and the tendency of this community to be isolated from the general population (Wilson, 2006; Hass, Dutton & Orloff, 2000). In spite of these challenges and the lack of specific data presently available about Latina women and domestic violence, many researchers cite numerous barriers that

cause Latina immigrants to be more vulnerable in abusive intimate partner relationships. A major factor researchers have cited is Latino culture.

Cultural impact

Though it has been criticized by some scholars, culture is a major factor cited by various studies to explain the connection between Latina immigrants and intimate partner violence. Studies conducted by Zarza, Ponsoda and Carrillo (2009), Ruiz Marrujo (2009) and Vidales (2010) address the impact of certain Latino cultural traits on Latina immigrants' experiences of intimate partner violence. When researching Mexican immigrant women's attitudes towards cultural gender expectations, for example, there was something very telling about the vernacular that women respondents used for discussing intercourse. In day-to-day conversation about sexual intercourse with their intimate partner, they used the phrase *cuando hace uso de mi*, which translates to "when he makes use of me" (Ruiz Marrujo, 2009, p. 42). This is an example of how some women, though it is probably on a subconscious level, have internalized and adopted a cultural trait that equates a woman's worth with her ability to have sex with her partner. This is a perfect example of a negative cultural trait that perpetuates sexist ideals, which not only devalue and objectify women, but also contribute to the notion that a woman only has worth when she is pleasing her partner.

There are other Latino cultural beliefs that increase Latina's vulnerability in abusive relationships. The sanctity of marriage is a shared cultural belief among Latinos, which pressures women to fear the stigmatization related to divorce (Hass, Dutton & Orloff, 2000; Wilson, 2006). Another value is familism, which places the unity and needs of the family ahead of individual needs. In practice, this often means that the needs of female family members are sacrificed for the greater good of the family, as opposed to male family members making the sacrifice (Vidales, 2009; Welland & Ribner, 2008).

Though this is true for most abused women, there is a strong desire among Latina women to prioritize their family's unity over all else (Vidales, 2009). Often, these women fear that if they leave an abusive partner, they (not their partner) will be criticized and deemed a failure as a wife, mother, and woman. There are other cultural values associated with traditional gender roles that demand males to be masculine and serve as the head of the house, while what is dictated as appropriate female conduct is passiveness and willingness to forgive (Vidales, 2009). The cultural value for women called *marianismo* stipulates that women have a stronger spiritual connection to God; however another aspect of *marianismo* is that this spiritual superiority is due to the fact that women will suffer at the hands of men, which includes not only male relatives but spouses and intimate partners (Welland & Ribner, 2008).

Relatedly, the Catholic faith is the predominant religion practiced by Latino immigrants, which may lead to increased vulnerabilities for abuse. Some Latina immigrants use their Catholic faith as a source of strength and justification for remaining in an abusive relationship; for example, some women believe if they prayed harder or were better Catholics, God would fix their situation (Vidales, 2009). Another way in which the Catholic Church has impacted Latina immigrants' vulnerability in violent situations is through its traditional teachings concerning contraceptives (Wilson, 2006). Latina immigrants tend to have more children than other immigrant populations as a result, and large family sizes make it more difficult for a woman to successfully leave her abuser. Women's shelters have limited space, more children cause a greater financial burden, and it becomes more difficult to find child care.

However, it is important to recognize that cultural beliefs and the Catholic Church have had positive impacts on the lives of abused women. Vidales (2010) notes that while there are Latino cultural traits that can be viewed as mechanisms for exacerbating Latina immigrants' vulnerability, there are also Latino traits that could be used to empower Latina immigrants experiencing intimate partner violence.

Culture can “be seen as a protective factor to prevent domestic abuse instead of as a commonly seen risk factor” (Vidales, 2010, p.542). For example, the Catholic Church began using religious doctrine to explain that domestic violence is not only illegal in the U.S., but that abuse is also a sin (Wilson, 2006).

The major criticism of this association between Latino culture and intimate partner violence is that such a focus leads to the oversimplification and stereotyping of Latinos and their culture (Menjivar & Salcido, 2002). Menjivar and Salcido (2002) theorize that a focus on Latino culture suggests that the issue of intimate partner violence among Latino immigrants is an “imported” problem. As an imported human rights issue, the obligation of the U.S. government to address the issue is diminished because the government can cite the native country’s cultural practices as the source of the problem, which they have no authority or obligation to correct (Menjivar & Salcido, 2002).

Other researchers have countered that this criticism is weak for several reasons. One weakness of culturally-neutral studies is the assumption that all women experience the same oppression, thus they have the same experiences in abusive relationships. Researching the impact of culture is important because it recognizes the effects that culture has on individuals’ perspectives and experiences. Vidales (2010) explains that it is important to establish some sort of cultural-competence because this allows for a better assessment of other “intersectional factors such as generational differences, level of acculturation, age, economic status...and/or individual gender perspectives” (p. 541). Understanding the culture provides the framework in which these other oppressions or barriers are experienced. It is important to identify and understand certain Latino cultural traits while being sensitive to the fact that the Latino community is heterogeneous (Wilson, 2006). Researchers must be aware of certain subgroups that have distinct racial, cultural, religious and socioeconomic traits which differ from this broader conceptualization of Latino norms (Welland & Ribner, 2008). Being able to recognize these distinctions helped uncover certain factors that otherwise may not be noted; for example, researchers

note different rates of intimate partner violence among Puerto Ricans, Mexicans and Cubans with the respective rates of 20.4 percent, 10.5 percent and 2.5 percent. Instead of researching this population as one unified Latino group, this division into subgroups led researchers to the conclusion that it was not the Latino culture but certain structural factors that were inciting higher rates of violence among Puerto Ricans and Mexicans (Welland & Ribner, 2008).

Immigration-related factors

There are many factors that have been linked to the heightened vulnerability of Latina immigrants in the United States. These factors include isolation, language barriers, political situations in country of origin, misunderstandings about domestic violence, the U.S. legal system, immigration status, economic barriers, and limited access to education or job-skills development.

One of the most important factors that make Latina immigrants vulnerable to violence is isolation (Wilson, 2006). There is a lot of pressure placed on immigrants in the United States to remain with abusers because of women's reliance on fellow immigrants who form their community. Merry (2009) explains:

When immigrant women leave their abusers they risk the condemnation of their community, on which they are particularly dependent. Immigrant women can be quite isolated and dependent on their linguistic and national communities for social supports such as interest-free loans, clothing, shelter, food, babysitting, and contacts to navigate immigration laws, access to family in the native country...and occasional physical protection. Abusers often maintain control over their victims by limiting access to outside work and language skills, increasing dependence on this community (p.116).

Furthermore, many immigrant communities do not want to report or address the prevalence of intimate partner violence. Some immigrant community members do not want the native-born

population to view their community in a negative light, so there is a tendency to hide issues such as intimate partner violence in what some researchers describe as “strategic silences” which impede public awareness (Narayan, 1995; Wilson, 2006; Hass, Dutton & Orloff, 2000).

Another barrier related to the increased vulnerability for abuse, which is also experienced by many other immigrant populations, is language barriers (Vidales, 2009). Women who do not speak English have a very hard time accessing help due to the fact that they cannot communicate with law enforcement, doctors, lawyers, and intimate partner violence advocates (Vidales, 2009; Wilson, 2006). Immigrants who are able to speak English may still face language barriers due to the fact that communicating very intimate and personal details may be difficult to do in a second language (Wilson, 2006). Language barriers also impede immigrant women from fully understanding information and resources related to domestic violence which are not in their native language (Wilson, 2006). Welland and Ribner (2008) explain that “abused immigrant women who attempt to flee may not have access to bilingual shelters, financial assistance of a certified interpreter in court, when reporting complaints to the police or a 911 operator, or even in acquiring information about their rights and the legal system” (p.9).

Political situations at home, which may include prevalent violence and war that necessitates fleeing one’s country of origin, may also increase Latina immigrants’ vulnerability in domestically violent relationships. Many Latinos experienced significant political instability due to civil wars, state-sponsored terrorism, narcotics trafficking, genocide, disappearances, torture, and government corruption at home (Zarza, Ponsoda, & Carrillo, 2009). The impact of these traumatic experiences may cause Latina immigrants to mitigate the relationship violence they suffer the same way that they mitigated the political violence they previously experienced in order to survive (Zarza, Ponsoda, & Carrillo, 2009;

Copelon, 1994). This history of state-sponsored abuse also explains why some women are skeptical of U.S. law enforcement and government agencies.

Another issue is that Latina immigrants may not understand that certain acts of violence, which were committed with impunity in their countries of origin, are illegal in the United States (Wilson, 2006). Immigrants who are perpetrators of violence may also not recognize that their actions are wrong, let alone criminal (Ruiz Marrujo, 2009). In part this is due to the fact that some Latin American countries still have not devised an effective legal response to incidents of domestic violence, which means there is widespread impunity for abuse. Welland and Ribner (2008) note that “immigrant batterers and victims may believe that the penalties and protections of the legal system do not apply to them” (p.9). In other words, misunderstandings about U.S. criminal statutes impede abuse Latina immigrants from fully understanding the severity of actions committed against them. (Ruiz Marrujo, 2009).

An institutional barrier that keeps immigrant women from leaving violent relationships is the U.S. legal system (Vidales, 2009). Many immigrant women have concerns about their legal status and fears of deportation, which pressure Latina immigrants to remain in abusive relationships. Women who are undocumented risk deportation, especially if they are unaware of or unable to access legal services that help undocumented and abused women navigate a very complex legal system. Successful completion of a petition for legal residency does not ensure that an undocumented immigrant woman will be allowed to remain in the United States (Wilson, 2006). The Violence Against Women Act attempts to provide some protection for undocumented immigrants who are abused and seek help. This well-intentioned law, however, has had little pragmatic impact on protecting undocumented women who seek help because it protects a very limited number of undocumented immigrants. Certain police protocols stipulate that if a call is received regarding an undocumented immigrant who is a victim of intimate partner violence, the officer must notify the Immigrant and Customs Enforcement. Women

who immigrated legally to the U.S. but are dependent on their abuser's legal status may also have their petition for residency denied (Merry, 2009). These women are also concerned with the legal status of their children, as well as what custodial rights they have over their children. Wilson (2006) argues that "perhaps one of the worst threats is that women may have to leave their U.S.-born children. Once deported, women can be excluded from the United States for five years. Deportation is something most battered immigrant women will not risk" (p. 133).

The U.S. legal system further perpetuates the marginalization of Latina immigrants, leading to further pressure to stay with their abuser, by its reliance on legal professionals to navigate the intricacies of the law. Even if a woman wants to separate from or divorce her partner, she will need some sort of legal assistance to deal with issues such as filling out orders of protection paperwork, separation of assets, filing for divorce and/ or filing for custody of children. It is important to note that well over half of all female immigrants who immigrate to the United States have only temporary legal status, which is dependent on their marriage (Zarza, Ponsoda, & Carrillo, 2009). If her status is dependent on her abusive partner, she can apply for temporary residency status which will allow her to legally remain in the United States for three to five years. After that time, she will have to either leave or apply for full citizenship. To apply for the temporary stay, she needs to consult with an immigration lawyer who is able to help her navigate her way through the complex aspects of immigration law. It is important to recognize that immigration litigation and divorce litigation are two very different types of law, which means that she will probably need the assistance of two lawyers. Even if she manages to find a lawyer who understood both immigration law and divorce proceedings, there is nothing that ensures her lawyer will speak Spanish or that her level of English comprehension will be at a high enough level to understand the complex language of legal documents. Since the U.S. Latino population suffers from a high rate of economic disparity (Zarza, Ponsoda, & Carrillo, 2009), many Latina immigrants may not be

able to take on the financial burden of moving out on their own, taking time off work to go to court, paying for one or possibly two attorneys, as well as the cost of court fees.

As previously mentioned, economic oppression is another barrier associated with the heightened vulnerability of Latina immigrations to domestic violence. Zarza, Ponsoda, and Carrillo (2009) find that “Latinos living in the United States are disproportionately affected by poverty, unemployment, low-paying jobs and lack of education opportunities” (p. 2). Research shows structural barriers, such as poverty and high economic burdens, are associated with higher rates of abuse due to the fact that these burdens are stressors in relationships (Hass, Dutton & Orloff, 2000). Vidales (2009) notes that 80 percent of the Latina immigrant women he interviewed suffered financial stress at the time of their abuse. Limited access to educational opportunities hinders Latina immigrants’ ability to develop skills which could be utilized when searching for better jobs if they left their abuser. Without these skills or access to employment with adequate wages, Latina immigrants may fear the financial burden would be too great if they left their abuser (Vidales, 2009).

Domestic violence is a serious problem in the U.S., but Latina immigrants who experience domestic violence encounter a variety of additional barriers that increase the dangers and severity of abuse compared to the general population. Cultural traits and values specific to Latinos create an increased vulnerability for abused Latinas. A multitude of other factors further oppress and limit Latina immigrants from seeking help if they are in an abusive relationship. Isolation, language barriers, violent political situations in their country of origin, the legal system, economic disparities, and lack of educational opportunities are some of the factors increasing their vulnerability. It is necessary for the U.S. government to intervene and implement policies that address these issues so that Latina immigrants in abusive relationships no longer experience these egregious human rights abuses.

U.S. Government's Duty to Protect the Rights of Abused Latina Immigrants

In order for Latina immigrants' rights to be effectively protected, it is important to address domestic violence as a public as opposed to a private matter. Focusing on the individual perpetrator only solves the issue at a micro-level, while addressing the sexist and racist roots of domestic violence as a societal issue begins to solve the problem at a macro-level. The problem is that states are reluctant to take on private issues, such as an individual husband abusing his wife in the privacy of their home. First, the U.S. government's actions concerning political asylum and the framing of domestic violence as a human rights issue provides a basis for understanding the state's duty to protect abused women's human rights. Second, legal frameworks and human rights theories regarding state responsibility explain why the U.S. is obligated to protect abused Latina immigrants more effectively.

Political asylum: Limited U.S. recognition of domestic violence as a human rights issue

The Rodi Alvarado case set a precedent for the federal government's recognition of the association between domestic abuse and human rights violations. The U.S. government's legal understanding of protected groups, which is used in political asylum cases, recognizes abused women as a "particular" social group that should be granted asylum. This is based on the recognition of abused women as a group that is exposed to high risks of continuing human rights violations when their governments fail to protect them from their abuser (Durst, 2009, p.93). In the case of Alvarado, the Guatemalan government repeatedly refused to prosecute her husband, a member of the military, even though there was evidence that inflicted horrendous violence on her; Alvarado fled her home and immigrated to the U.S., where she successfully filed for and was granted political asylum. Though asylum based on being a member of the protected "abused women" group has been granted only in this one

instance, the case set a precedent for U.S. recognition of domestic abuse as a human rights violation (Durst, 2009).

Unfortunately, government officials are under political pressure to not recognize battered women as a protected group in asylum cases. This is not to say that other abused women have not successfully sought asylum in the U.S., it is just that no other woman was granted asylum based on her membership of the protected “abused women” group. For example, a non-citizen Moroccan woman was granted asylum because she was being persecuted for her religious beliefs; she was being abused for not conforming to the fundamentalist, sexist Islamic beliefs of her abuser. However, increasing anti-immigration constituents assert that giving battered women asylum would open up the flood gates to a multitude of abused immigrant women petitioning for asylum in the U.S. (Durst, 2009). Such assertions illustrate the prevalent xenophobic and sexist attitudes in the U.S. that are at the root of abused Latina immigrants’ increased vulnerability. However, discrimination against Latina immigrants goes beyond political asylum cases and has implications for the U.S. government and its duty to protect this population.

U.S. duty to protect abused Latina immigrants

International human rights law establishes a framework for justifying the U.S. government’s obligation to protect abused Latina immigrants. First, it is important to understand fundamental principles of international human rights law. One major principle is state responsibility, which Thomas and Beasley (1993) define as “the limits of a government’s accountability for human rights abuses under international law” (p.41). This is where the dichotomy of public versus private abuses becomes important. The theoretical state is not a physical entity capable of violating an individual’s rights; rather, an individual acting on behalf of the state entity is used to violate another individual’s rights (Thomas &

Beasley, 1993). This private individual is violating another individual's rights on behalf of the public entity, which is the state. An example of this would be a government commanding individual military officers to kidnap and torture civilians. However, if an individual acts on their own behalf and violates another individual's right, this is an example of a private act of violence (or crime), for which the government is not necessarily accountable. For example, if a private citizen kidnaps and tortures a child, it is an example of a heinous act, but it is a crime by the individual rather than the state. What separates these crimes of kidnapping is that in the first instance the state was sanctioning the kidnapping, while in the second example the state was not involved. This is known as the public-private dichotomy.

There are two tests used to determine state responsibility; one test focuses on state responsibility for public acts, while the other focuses on state responsibility for private acts. Thomas and Beasley (1993) explain that states are responsible for actions of individuals if one of two criterion is met: "(1) the state explicitly authorized the act...(2) the state systematically failed to prosecute abuses committed by its agents whether or not these acts were ordered by senior official" (p.42). Using the previous example of a private citizen kidnapping and torturing a child: Although this child's rights are being infringed by this private actor, this does not fit the legal definition of a human rights abuse by a responsible state. Kidnapping and torture by a private actor on the surface appears to violate numerous rights protected by international human rights doctrine. However, as Thomas and Beasley (1993) clarify:

Rights are *against the state*, not rights that the states must enforce against all other persons. States cannot be held directly accountable for violent acts of all private individuals because *all* violent crime would then constitute a human rights abuse for which states could be held directly accountable under international law (p. 43).

This separation of public abuse versus private abuse forms the basis of the argument stipulating that domestic violence is private issue, meaning that the state bears no responsibility for its occurrence. Such criticism notes that it is not the state, but rather a private individual who assaults, rapes, or

murders their intimate partner. This makes the individual, not the state, responsible. However, such criticism fails to recognize that the state can be held accountable, in some special cases, for a private actor's actions.

The test for state responsibility regarding private acts is different than the public acts test. As Thomas and Beasley (1993) explain, "non-prosecution of the crimes of private individuals becomes a human rights issue *only* if the reason for the state's failure to prosecute can be shown to be rooted in discrimination" (p.42). This is based on human rights documents prohibiting discrimination; for example Article 26 in the International Covenant on Civil and Political Rights (Thomas & Beasley, 1993). A state is responsible for private individuals' crimes when their failure to protect is based on discrimination against the group whose rights are violated by these private actors. Due to the private nature of intimate partner violence, state responsibility is contingent on whether or not it can be proved that discrimination is at the root of domestic violence's non-prosecution or unequal application of laws. Without proof of discrimination, domestic violence remains a private matter of which the state is not held accountable.

The various oppressions and barriers that inhibit Latina immigrants from being equally protected by U.S. laws are examples of discrimination, which means that the U.S. government has a duty to reform current policies perpetuating this unequal protection. Thomas and Beasley (1993) note that in order to prove state responsibility, "there would have to be systematic, discriminatory non-enforcement of the domestic criminal law against murder or assault for domestic violence to constitute a human rights issue" (p.43). Various studies and reports have shown examples of systematic discrimination and non-protection of abused Latina immigrants in the U.S. Villalón (2010) notes that her data shows "formal and informal barriers stand[ing] in the way of battered immigrants' access to the rights to which they are in principle entitled" (p.555). Many components of the U.S. legal system prevent Latina

immigrants from full and equal protection. Current immigration policies force both undocumented immigrants and immigrants whose status is depend on their abuser to choose between remaining in an abusive relationship or jeopardizing their legal status, risking deportation (Wilson, 2006). Legal status is an area of great concern, especially when one considers that applying for citizenships is expensive, time consuming, and complex (Villión, 2010). For example, the process can take up to eight years, during which time the applicant does not have the same access to legal and social services as citizens (Villión, 2010). One of the reasons researchers believe that immigrants experience higher rates of domestic violence compared to the general population is due to their comparatively limited access to legal and social services (Wilson, 2006).

However, the most pervasive example of discrimination against Latina immigrants is the attitudes and actions of racist and sexist law enforcement officials. As Vidales (2010) explains, “police attitudes and behavior reflect societal perceptions of domestic violence and the status of women in U.S. society” (p.539). Latinas who contact law enforcement officials face different treatment than the general population with regard to reporting abuse (Rivera, 1994). This is due to the fact that Latina immigrants are at risk of multiple types of discriminations concerning their sex, race, ethnicity, and legal-status. Programs educating police officers about domestic violence and the ways in which they should respond to such calls have failed to acknowledge the pervasiveness of racist attitudes that occurs nationally (Rivera, 1994). The police’s attitude when responding to domestic violence is a barrier that disproportionately impacts Latina women, as well as all women of low-economic status and color who are more reliant than the general population for such assistance (Vidales, 2010). The frequent recognition of the unique experiences of abused Latina immigrants illustrates that discriminatory attitudes of law enforcement officials impedes access to adequate protection and prosecution of their abusers. Law enforcement officials are representatives of the state, and it is their duty to ensure that all individuals receive equal protection under U.S. laws. Based on the recurring evidence of officers’

discrimination against abused Latina immigrants, it is evident that the U.S. government is not meeting the aforementioned international human rights law standards. The U.S. is failing to ensure that the state, as represented by its law enforcement, protects and prosecutes the crime of domestic violence without discrimination.

Because the U.S. government has a duty of non-discrimination, it is important to understand the ways in which the state can remedy discriminatory policies so that the rights of Latina immigrants are no longer violated. The next section provides some recommendations for the state, as well as for various other public sectors that could more equally assist abused Latina immigrants.

Recommendations

It is important to address the structural and institutional barriers which continue to keep abused Latina immigrants in their highly vulnerable position. Without changes to these barriers, Latina immigrants in abusive intimate partner relationships will continue to face not only unjust oppression but also egregious violations of their human rights.

It is very difficult to develop realistic and attainable solutions to the problems which are categorized as structural barriers. Problems that Latino immigrants encounter that are considered structural barriers include low-paying jobs, poverty, and limited education attainment in comparison to other immigrant populations (Vidales, 2010). Underlying these barriers is an even harder problem to address, which is the discrimination and sexist attitudes towards Latinos as a population, immigrants as a population, and women as a population.

To begin to reduce the underlying prejudices and discrimination against Latino immigrants, different public officials involved with the legal system should undergo mandatory training. During these

training sessions, members of the judiciary as well as law enforcement officials should be familiarized with Latino culture in general, as well as the unique difficulties that immigrants encounter. During these training sessions, it would also be valuable to educate these individuals (especially law enforcement officials) about domestic violence. Not only would this allow these officials to become familiar with how serious and pervasive the issue of domestic violence is, but it would be a great opportunity to educate them about the domestic violence “red flags” and the proper way to react to situations of suspected domestic violence. Educating law enforcement officials about the unacceptability of sexist, racist or anti-immigrant attitudes or practices is an important first step in assuring that every individual is protected by U.S. law equally. Furthermore, it is important to implement certain checks or methods for monitoring police officers responding to domestic violence calls, especially in areas where there is a high population of Latina immigrants; this would be one method for holding accountable officers who fail to meet the non-discriminatory policies that are essential for the equal protection of rights.

Another recommendation related to eliminating structural barriers is to implement “community based programs... to serve the specific needs of Latina immigrants who face domestic violence” (Vidales, 2010, p. 542). These community-based programs are especially important for women who are leaving domestic violence shelters. Numerous studies in the 1990s showed that women who had been paired with advocates for two weeks had a more successful post-shelter transition period than women who were not given advocates the two weeks before leaving. As Vidales (2010) explains, “women who received advocacy services...have better social support, and a decreased risk of abuse for at least two years” (p.542). Matching Latina immigrants with an advocate during the final days of their stay at a shelter, as well as during their first few weeks on their own is incredibly important for these women. Multiple studies of Latina immigrants show that one factor which compelled them to remain with their abusive partner was the fact that these women feared losing their close-knit Latino community. For immigrants, leaving one’s community can lead to very strong feelings of isolation and abandonment

because these communities do more than provide comfort and friendship. Often members of these immigrant communities become dependent on one another for survival. For example, they translate for each other if there are challenges with English, they help each other if financial burdens become overwhelming, they help each other send mail and support to relatives in home countries, and so forth (Wilson, 2006). For women who are leaving shelters, it is necessary to provide temporary support so that these women are not tempted to return to their communities (and abusers) where they may now face more danger and violence (Wilson, 2006).

Changes are also needed so that abused Latina immigrants no longer encounter institutional barriers when trying to communicate and establish trust with law enforcement and legal system officials. Vidales (2010) suggests that language barriers could be resolved through “service providers [who] collaborate with local education services to teach monolingual clients basic English” (p.542). It is recommended that these services are provided in public institutions, such as court houses or women’s shelters, where those who participate in English as a Second Language (ESL) classes have the opportunity to interact with officials – including police officers, battered women’s advocates, primary education teachers, and social workers. The more that Latina immigrants become familiar with these officials and resources, the more they will develop trust for the individuals who work for these government institutions. Eventually, the trust of a few police officers that they see every week at the court house during English lessons will hopefully develop into a trust of law enforcement in general. It is important that this vulnerable population develops a certain level of faith in law enforcement officials, leading to an expanded knowledge of her options and alternatives to an abusive relationship (Wilson, 2006).

Because many Latina immigrants are isolated, it is important to distribute information about domestic violence and services in locations that these women may frequent. These locations may

include international grocery stores, public health clinics (where they are likely to take their children), or Catholic churches with a high Latino demographic. It is also important to remember to provide this information in both English and Spanish so that immigrants with limited English skills can utilize the resources.

Some researchers believe it would be beneficial if the U.S. government increased mandates for batterer's intervention programs (Welland and Ribner, 2008). Though such programs' success rates have yet to be fully researched, advocates of these programs assert that they allow for the Latino community to network. Through this collaboration of Latinos with varying experiences and perspectives related to domestic violence, they can establish dialogues that are culturally relevant to their situation (Welland and Ribner, 2008). Several predominantly male domestic violence advocacy organizations have been created from this form of networking, including: *Hombres por la Equidad*, *Movimiento de Hombres por Relaciones Equitativas Sin Violencia*, *Corozonar: Abriendo Senderos hacia la Reconciliación*, and *Alternativas para la Equidad y la Diversidad* (Welland and Ribner, 2008).

Further research on this issue is also necessary so that both governmental, non-governmental, and grass-roots organizations can better understand what factors need to be addressed in order to protect the rights of Latina immigrants. Further studies that focus not only on the experiences of Latina immigrants, but also on various other immigrant populations may be helpful in addressing broad issues related to the abuse of immigrant women. Until there is better data on domestic violence and Latina immigrants, advocates, and policy makers will be ill-equipped to implement effective programs for addressing the barriers to rights protection.

For too long, Latina immigrants who experience domestic violence have been marginalized and ignored by their communities, the U.S. government, and human rights discourse. This ignorance has left Latina immigrants in violent relationships to suffer egregious human rights abuses at the hands of their

intimate partners. Without more information and data concerning what factors are causing this increased vulnerability to abuse, these women will continue to suffer grave human rights violations. It is necessary for researchers, advocates, and the U.S. government to prioritize the implementation of policies which could be life-saving and dignity-restoring for Latina immigrants.

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