

COMMENTS

Equal Rights, Unequal Protection: Institutional Failures in Protecting and Advocating for Victims of Same-Sex Domestic Violence in Post-Marriage Equality Era

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I. INTRODUCTION

In the past forty years,¹ domestic violence² has climbed from relative obscurity to infamy in American social consciousness. From the

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1. U.S. feminists began the modern “battered women’s movement” in the 1960s and 1970s; this is discussed in detail in the Part II. See Engle Merry & Jerry Shimmin, *The Curious Resistance to Seeing Domestic Violence as a Human Rights Violation in the United States*, in HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 114 (Shareen Hertel & Kathryn Libal eds., 2011).

2. I will be using the term “domestic violence” and “intimate partner violence” interchangeably to refer to the “willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another.” *Learn More: What Is Domestic Violence?*, NAT’L

establishment of battered person syndrome as a psychiatric disorder to the enactment of Violence Against Women Act (VAWA),³ there has been a pronounced social revolution not only in recognizing the pervasiveness of intimate partner abuse but also in an overwhelming public interest in intervention, social and legal advocacy, and violence prevention. Furthermore, the emergence of domestic violence law has occupied a precarious position in criminal law; in fact, one of the most famous criminal trials in the past fifty years was, first and foremost, a domestic violence case.⁴

Also, at the forefront of American social consciousness during the past few decades was the LGBT community's fight for civil rights, which has brought out an undeniable surge of not only recognition and representation but also acceptance and legal equality. From the Stonewall riots of the late 1960s, the first inciting events of the gay liberation movements, and the HIV/AIDS protests of the 1980s, which forced an openly adversarial presidential administration to confront a global pandemic, to the legalization of same-sex marriage in 2015, LGBT groups have won multiple victories in the battle for equal rights in the last six decades. While certainly homophobia and transphobia continue to pervade across the United States, and the road toward progress has been by no means straightforward,⁵ the LGBT community has nonetheless garnered a tremendous increase in legal and social rights.

Despite these victories, domestic violence victims and LGBT individuals are still systematically marginalized and suffer extreme physical and psychological harm as a result. LGBT people who are themselves victims of intimate partner violence (IPV) are at greater risk of severe abuse, including homicide.⁶ In a recent study, gay men were found to be more likely to require medical attention and suffer injuries as a result of IPV⁷ and sixteen times more likely to suffer injury as

COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/learn-more> (last visited Apr. 06, 2018). I also use the term "victim" and "survivor" interchangeably.

3. 34 U.S.C.A. § 12361 (West 2017).

4. See *People v. Simpson*, No. BA097211 (Cal. Super. Ct. L.A. County Oct. 3, 1995). Discussion of this case is continued in Section III.A.

5. See, e.g., *Bowers v. Hardwick*, 478 U.S. 186 (1986).

6. LGBTQ men made up 47.6% of intimate partner homicide victims, and a majority of homicide victims identified as gay (47.6%) and lesbian (28.6%). *Who Is Doing What to Whom? Determining the Core Aggressor in Relationships Where Domestic Violence Exists*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE, https://ncadv.org/assets/2497/who_is_doing_what_to_whom.pdf (last visited Apr. 06, 2018).

7. *Id.*

compared to individuals who did not identify as gay men.⁸ Further, there are issues that affect same-sex relationships exclusively, and which are seldom addressed by domestic violence policies and legal advocacy organizations, even those with the best intentions.⁹ As a result, despite all of the social and legal advances the LGBT community has made in the United States, victims of same-sex domestic violence are still largely left behind in the human rights discourse. State and local legislators must address these concerns by drafting gender-neutral domestic violence abuse statutes, prioritizing IPV education in local schools, effectively educating law enforcement in response to same-sex domestic violence, and enacting harsher criminal penalties for abusers.

II. THE HISTORY OF DOMESTIC VIOLENCE LAW

The history of the social and legal understanding of domestic violence is a complicated and rather recent endeavor. Born from the concept of “wife-beating” in the early nineteenth century, domestic violence emerged as a social problem in the 1960s when the women’s liberation movement illuminated the extensive harm experienced by victims in the private sphere.¹⁰

Womens’ first organized protests against wife-beating challenged the pervasiveness of alcohol abuse as an instigator of violence, rather than the husband’s unrestricted legal authority over his partner and children.¹¹ The temperance movement was repeatedly characterized by vivid accounts and illustrations of women and children who had been physically abused and lived in squalor due to their drunken, abusive patriarchs.¹²

8. *Id.*

9. Specific issues will be addressed in Part IV but include homophobia, HIV/AIDS stigmatization, heightened risk of STD, lack of legal support, and systematic failure to acknowledge domestic violence within homosexual relationships compared to heterosexual relationships. Alysondra Duke & Meghan M. Davidson, *Same-Sex Intimate Partner Violence: Lesbian, Gay, and Bisexual Affirmative Outreach and Advocacy*, 18 J. AGGRESSION, MALTREATMENT & TRAUMA 795, 795-816 (2009). Abusers may “out” the partner to their family, employer, or community; thus, reinforcing fears that law enforcement will not assist because he/she is LGBT or convince the victim that abusive behavior is “normal” for LGBT relationships. *Statistics*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/statistics> (last visited Apr. 06, 2018).

10. KELLY WEISBERG, *DOMESTIC VIOLENCE: LEGAL AND SOCIAL REALITY* 3 (2012).

11. Reva B. Siegel, “*The Rule of Love*”: *Wife Beating As Prerogative and Privacy*, 105 YALE L.J. 2031, 2122-34 (1996).

12. *Id.*

An alternate approach to challenging domestic violence came from feminists in the late nineteenth century. Feminists and social purist reformers alike argued that physical, psychological, and sexual abuse of women stems from a husband's legal ownership rights over his wife's body and advocated for emancipation to sever that right.¹³ In addition to publicly campaigning for divorce rights, feminist groups offered shelter to victims, advocated for victims in divorce and custody cases, and held public forums on the most severe offenses of battery.¹⁴ While there was a marked interplay between feminists and the temperance movement, the kind of advocacy that early feminists conducted has had a lasting effect on not only the *manner* of assistance, but *who* can provide and receive aid, as shown by contemporary victim advocate organizations. Thus, it is difficult to divorce gender from domestic violence, as its rise to political consciousness came as a result of projecting images solely of women who were victimized (battered) by abusive men. Further, since the movement was guided in large part by the women's liberation movement, language and philosophy of modern domestic violence policy and advocacy have been informed and shaped largely by women.

Besides its gender implications and distinctions, unlike other human rights issues in the United States, the domestic violence movement is colored by its necessary reliance on the state for financial support of victims' services, primarily legal advocacy.¹⁵ As a result, domestic violence support providers and activists have adopted the view that victims of domestic violence must assert themselves as individuals and remove their dependency on their partners and the state.¹⁶ Safety is assured by achieving both emotional and economic self-sufficiency and autonomy. This view differs substantially from the standard human rights approach, which seeks solutions through structural changes like poverty reduction and new government policies.¹⁷

While gender-specific laws are unconstitutional without a compelling government purpose,¹⁸ it is difficult to remove gender as a major factor in promoting domestic violence prevention and protection policies. Gender and relationship norms are not only a substantive driving force behind intimate partner abuse (objectification of women by

13. ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING 15 (2000).

14. *Id.*

15. Merry & Shimmin, *supra* note 1.

16. *Id.* at 113.

17. *Id.* at 114.

18. *See, e.g.,* Craig v. Boren, 429 U.S. 190 (1976).

men, presumed submissiveness of women) but also color how domestic violence laws are drafted and interpreted.¹⁹

III. SOCIETAL DISTINCTIONS IN DOMESTIC VIOLENCE LAW

A. *Gender & Relationships*

So much of our society's understanding regarding domestic violence comes from traditional Western gender roles projected by religious and secular influences and reinforced by media. From a young age, Western society is socialized to believe that certain characteristics are innate in a particular gender. For boys, aggressiveness and action are the ideal (the superheroes); for girls, kindness and beauty are the ideal (the princesses).²⁰ Such socialization informs not only how men and women react to abuse, but how their actions are perceived by law enforcement and society at large.

A significant determinant of how we see "normal" relationships is religion. Often, religious doctrine promotes values that might encourage battered persons to stay in abusive relationships, or normalizes abusive behavior, especially if that person identifies as female. Although followers of Abrahamic faiths and traditions do not have a monopoly on "traditional" beliefs and customs that affect a domestic violence victim's choices and behaviors, these beliefs and customs adopt increased significance because they are grounded in "God's will."²¹ Specifically, women are subjected to men's "selective and skewed" interpretation of scriptures, which promote female submission as well as forgiving their husband's offenses "seventy times seven."²² Women are taught to be committed to their families, and that this commitment ought to occupy the highest priority in their lives, as well as that divorce is wrong and stigmatized.²³ This environment forces women to choose between religious beliefs or assistance in escaping from abusive relationships, and battered women are often likely to select the former.²⁴

19. Kristen L. Anderson & Debra Umberson, *Gendering Violence: Masculinity and Power in Men's Accounts of Domestic Violence*, 15 *GENDER & SOC'Y* 333, 358-380 (2001).

20. See MARY PIPHER, *REVIVING OPHELIA: SAVING THE SELVES OF ADOLESCENT GIRLS* (1994).

21. Kathleen A. McDonald, *Battered Wives, Religion, and Law: An Interdisciplinary Approach*, 2 *YALE L.J. & FEMINISM* 251, 253, 290 (1990).

22. *Id.* I am referring to religious texts broadly, but with Biblical phrases like this in mind: "Let a woman learn quietly with all submissiveness. I do not permit a woman to teach or to exercise authority over a man; rather, she is to remain quiet." (1 *Timothy* 2:11-15).

23. *Id.*

24. *Id.*

In addition to religious influence, secular forces play a large role in reinforcing damaging values that bolster the acceptability of patriarchal, toxic intimate relationships as standard. This is particularly true with media targeted towards children and young people. Young people may be less able to discern abusive behavior when media normalizes toxic relationships. Cultural landmarks like *Twilight*, *Gossip Girl*, and *Fifty Shades of Gray* normalize emotional and physical violence between intimate partners while also marketing themselves to young adults (specifically teenagers). Men who are aggressive, even violent, are played by attractive men and are projected as more attractive as a result of their behavior, and passive female characters fall victim to their “charms.”²⁵ These attitudes contribute to the acceptability of teen dating violence; some teenagers cannot differentiate abuse from caring, have traditional views of gender roles, and believe that sexual betrayal or disclosure of sensitive information justifies abuse.²⁶

And while we socialize women to be forgiving and kind, especially towards their male partners, we also expect female victims of domestic violence to be the first ones to react to abusive behavior on behalf of themselves and their families (particularly children). Nowhere is this more apparent than the media reaction to the O.J. Simpson case, in which both the media and jurors treated Nicole Brown Simpson with a fair amount of “uncomprehending disdain” due to a perceived failure to leave her ex-husband.²⁷ Even female jurors who had themselves been victims of domestic violence accepted and minimized Simpson’s history of violence.²⁸

As observed in the *Simpson* case, society often put all of the responsibility on the female victim to recognize abusive patterns of behavior and to remove herself from the situation, despite contradictory socialization that encourages empathy, forgiveness, and an ability to overlook warning signs in favor of the soul or heart of the abusive partner: qualities of which an abuser undoubtedly takes advantage. In doing so, we forget that the abuse begins and ends with the abuser.²⁹ This

25. See Mimar Ramis, Maria Jose Alonso & Gregor Siles, *Communicative Methodology of Research in Preventive Socialization of Gender Violence*, 6 INT’L REV. QUALITATIVE RES. 183, 183-97 (2013).

26. WEISBERG, *supra* note 10, at 76.

27. SCHNEIDER, *supra* note 13, at 205 (quoting Marcia Clark’s autobiography: “[T]he very mention of the words ‘domestic violence’ aroused volatile emotions in people. . . . Female jurors often viewed victims of domestic violence with uncomprehending disdain.”).

28. *Id.*

29. For the following paragraph, I will use gendered pronouns to describe the abuser and victim for the purposes of explaining how gender can tie into abusive behavior when carried out by a man; I am not saying that abusers are solely male or that victims are solely female.

may be because abusers are perceived as monsters, inhuman and unfeeling. Unfortunately, that is simply not the case. Abusers exist in large part because they are socialized to be abusive, and a lot of this comes from how society classifies and categorizes gender. In a recent study, male abusers were interviewed regarding their behavior; men in the study described their actions as a “rational response” to “extreme provocation, loss of control, or a minor incident that was blown out of proportion.”³⁰ While denying violent behavior is certainly an element of human nature, these accounts are also gender performance, as the respondents presented themselves as “rational, competent, and masculine actors.”³¹ Further, the abusers themselves gendered the violence, specifically describing female violence in a distinct manner,³² while also constructing gender in a manner that placed the blame on their female partners. They also claimed victimization by the criminal justice system for generalizing men as villains and women as victims.³³ Additionally, the male respondents did not describe situations in which they believed that they were in danger.³⁴ The respondents’ actions and understandings reflect extremes of male gender norms; boys and young men perceive themselves as “careful perpetrators of violence” through athletics, and brave in the threat of “natural” violence and resulting injury.³⁵

B. Gender & Crime

The normalization of abusive relationships due to preservation of archaic “traditional” gender norms are not unlike the way we see gender as it relates to crime. While both men and women are victims of violent crime at comparable rates,³⁶ we often view women as more likely to be victimized. These assumptions lead to particularly damaging results for men who are victimized and are seeking relief, justice, and protection, especially those who are victims of crimes that we tend to predominantly associate with female victims.

30. Anderson & Umberson, *supra* note 19, at 362.

31. *Id.*

32. *Id.* at 363. In fact, the respondents described their violence as “rational, effective, and explosive,” and feminine violence as “hysterical, trivial, and ineffectual.”

33. *Id.* at 362.

34. *Id.*

35. *Id.* at 363.

36. In 2015, the Department of Justice found that 15.9% of men were victims of violent crime while 21.1% of women were victims of violent crime. Violent crime includes rape or sexual assault, robbery, aggravated assault, and simple assault. BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION RESULT (2015).

Like domestic violence, sexual violence is the most obvious example of how our preconceptions of gender influence the way we see crime. Sexual assault is underreported for both genders,³⁷ but in particular groups, victims of sexual assault so rarely report that there is very little data available for analysis: “Due to the relatively small number of sample cases, coupled with a low rate of victimization, estimates of male sexual violence from the National Crime Victimization Survey (NCVS) cannot be used reliably for further disaggregation by victim and incident characteristics.”³⁸ However, this does not mean that men are not assaulted; instead, lack of data here could indicate male victims are not reporting sexual assault or, worse, may not recognize that they were sexually assaulted. In fact, a recent study found that 38% of sexual assault incidents were inflicted against men.³⁹ Sexual violence in which men are victimized is not only terribly underreported, but also when it is reported, even in massive numbers, the public (media) often dismisses it. As a result, sexual assault related to men is largely absent from Western human rights discourse, even when there is a long history of organizations objectifying women’s sexually victimized bodies in order to further political purposes.⁴⁰

As we view domestic violence as a gendered crime, defined in our sociological consciousness as an action inflicted *by* men and *upon* women, it is difficult to identify and understand intimate partner violence within same-sex relationships as domestic violence. It is very telling that for all of society’s progress towards legal equality for women and LGBT individuals, the public still fails to aid and empower victims of domestic violence. However, while men are statistically the dominant perpetrators of domestic violence,⁴¹ both men and women are victims of domestic violence. More than one in three women in the United States have

37. Police reporting of sexual assault has dropped to 32%, as opposed to 59% in 2003. BUREAU OF JUSTICE STATISTICS, FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010 (2013).

38. *Id.*

39. Hannah Rosin, *When Men Are Raped*, SLATE (Apr. 29, 2014 12:54 PM), http://www.slate.com/articles/double_x/doublex/2014/04/male_rape_in_america_a_new_study_reveals_that_men_are_sexually_assaulted.html.

40. This has occurred in multiple conflicts. Most notably and recently, in the Bosnian War in the late twentieth century the rapes of women were a focal point of interest for Western reporting on the conflict, the vast amount of rapes and sexual humiliation of men were hidden. SONIA CORREA, ROSALIND PETCHESKY & RICHARD PARKER, SEXUALITY, HEALTH AND HUMAN RIGHTS 199 (2008).

41. Men carry out 97% of domestic violence, while 96% of responsive (defensive) violence is carried out by women. Additionally, typically men are the perpetrators of serious violence. Tjaden, P. & Thoennes, N. (1998). NAT’L. INST. OF JUSTICE CTRS. FOR DISEASE CONTROL & PREVENTION, STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY (1998).

experienced rape, physical violence, and/or stalking by an intimate partner,⁴² and one in four men have been physically abused by an intimate partner.⁴³ Additionally, one in seven men have been severely physically abused [including strangulation, burning, and assault] by an intimate partner at some point.⁴⁴ This is not solely nor simply an issue of gender; rather, domestic violence is an issue of power and control as well as gender and relationship socialization.

IV. SPECIFIC ISSUES IN ABUSIVE SAME-SEX RELATIONSHIPS

A. *Societal and Systematic Homophobia*

There are some protections available for same-sex domestic violence victims. VAWA was intended to prevent violence against women, yet the legislation's language is gender-neutral in regards to victims, and because LGBT people are often regarded as an "underserved population," VAWA may also apply to both male and female victims of same-sex domestic violence.⁴⁵ However, there are many issues that are specific to same-sex domestic violence and warrant consideration and policy modifications in the future. The most prominent one is societal homophobia and sexism. While the LGBT community has made great strides towards legal equality in the United States, there are still a great number of people who are homophobic and respond to openly LGBT individuals and relationships with violence or threats of violence. A victim of domestic violence in a same-sex relationship may not want to endanger themselves or their partner or jeopardize his or her social positioning (employment, relationships, etc.) by "outing" themselves to law enforcement, even when there is a considerable perceived danger. Similarly, an abusive partner may use homophobia as a weapon against the victim by threatening to publicly reveal his/her sexual orientation.⁴⁶ This not only provides the abuser with

42. NAT'L CTR. FOR INJURY PREVENTION & CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT (2011), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

43. *Id.*

44. *Id.*

45. Lynn Rosenthal, *Ensuring LGBT Victims of Domestic Violence Can Access Critically Needed Services and Protections*, WHITE HOUSE (May 12, 2012), <https://obama.whitehouse.archives.gov/blog/2012/05/15/ensuring-lgbt-victims-domestic-violence-can-access-critically-needed-services-and-pr>.

46. Sharon Stapel, *Falling to Pieces: New York State Civil Legal Remedies Available to Lesbian, Gay, Bisexual, and Transgender Survivors of Domestic Violence*, 52 N.Y. L. SCH. L. REV. 247, 254-59 (2008); Joanna Bunker Rohrbaugh, *Domestic Violence in Same-Gender Relationships*, 44 FAM. CT. REV. 287, 293 (2006).

additional leverage against the victim but reassurance that their abuse will continue without reproach or prosecution.⁴⁷

If an individual does report domestic violence, there is a fair chance that the responding law enforcement officer may rely on stereotypes to determine who was the instigator and thus impede the proper implementation of mandatory arrest laws.⁴⁸ An officer may assume that the more “masculine” partner is the primary aggressor or that violence within male same-sex relationships is normal.⁴⁹ As a result of discriminatory treatment, an LGBT individual in a same-sex relationship may not reach out to law enforcement again for domestic abuse.⁵⁰

B. Dual Arrests in LGBT Relationships

Dual arrests are an overwhelming problem in same-sex domestic violence cases. When both parties are the same gender and same considerable physical size, officers often assume there is no difference in power between them and arrest both individuals.⁵¹ When physical violence occurs between a same-sex couple, the violence is identified as a mutual domestic violence incident and law enforcement holds both partners equally responsible.⁵² During a dual arrest, the victim may not be given protection provided by domestic violence statutes and an abuser may utilize the dual arrest to convince the victim that they are also accountable for violence, thus allowing the pattern of abuse to continue.⁵³

A recent study has shown that 26% of female same-sex couples and 27% of male same-sex couples endure dual arrests; this is substantially higher than the 1.3% dual arrest rate for all intimate partner violence cases.⁵⁴ Further, researchers speculate that “sex role stereotyping may play a part in the arrest decision [for female same-sex couples]”; and while some level of violence may be regarded as “normal” between two men, such violence may be regarded as “intolerable” between two women.⁵⁵ This is despite the fact that lesbian couples report significantly less intimate partner violence than women in opposite sex relationships

47. Tara P. Pfeiffer, *Out of the Shadows: The Positive Impact of Lawrence v. Texas on Victims of Same-Sex Domestic Violence*, 109 PENN. ST. L. REV. 1251, 1255-56 (2005).

48. Stapel, *supra* note 46.

49. *Id.*

50. See *infra* Section IV.C on community-wide mistrust in law enforcement.

51. Satoka Harada, *Additional Barriers to Breaking the Silence: Issues to Consider When Representing a Victim of Same-Sex Domestic Violence*, 41 U. BALT. L.F. 140, 161 (2011).

52. *Id.*

53. *Id.*

54. WEISBERG, *supra* note 10, at 229-30.

55. *Id.*

(11% and 30%, respectively), whereas gay men experience more such violence than men in opposite-sex relationships (15% and 8%, respectively).⁵⁶

C. *Community-Wide Mistrust in Law Enforcement*

Although law enforcement resources are available to victims of same-sex domestic violence, many LGBT victims view the option not as the solution to their problem, but rather, as another problem entirely. Historically, the LGBT community and law enforcement have had a tumultuous relationship, and while it has improved in some ways, discriminatory behavior and harassment by law enforcement officers is still prevalent. For example, in a recent survey, LGBT people and people with HIV/AIDS who had interacted with law enforcement in the previous five years cited various instances of hostile attitudes, verbal assaults, sexual harassment, and physical assaults.⁵⁷ Discrimination, harassment, and abuse by officers weakens community trust,⁵⁸ hinders law enforcement's ability to effectively address the concerns of their respective communities, and reduces overall reporting of crimes by victims in the LGBT community.⁵⁹ Many victims of domestic violence have themselves had past homophobic or transphobic interactions with the police and do not view law enforcement as available to LGBT communities; thus, survivors who would otherwise call the police are often afraid to do so because of a fear of what the police (or fellow inmates) will do to their partners once their partners are in custody.⁶⁰ This leaves victims in difficult and dangerous situations with abusive partners who will likely abuse again with the understanding that no consequences will be dealt for such abuse.

D. *Poor Reporting*

One of the main reasons why same-sex domestic violence is seldom recognized, analyzed, or considered in the wider human rights discourse

56. *Id.* at 89.

57. See CHRISTY MALLORY, AMIRA HASENBUSH & BRAD SEARS, WILLIAMS INST., DISCRIMINATION AND HARASSMENT BY LAW ENFORCEMENT OFFICERS IN THE LGBT COMMUNITY (Mar. 2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>.

58. *Id.* (describing how 40% of gay and bisexual men believed that contacting the police in response to intimate partner violence would be unhelpful (or very unhelpful), and 59% believed that the police would be less helpful to a gay or bisexual man than to a heterosexual woman in the same situation).

59. *Id.*

60. Stapel, *supra* note 46, at 254-59.

is because of lack of reporting. Unfortunately, in today's volatile political climate, it does not appear as though there will be an improved relationship between the LGBT community and law enforcement. In 2014, an annual elderly survey that determines services for elders included an LGBTQ identification question, which produced a finding that there are currently 3 million LGBTQ people over the age of fifty-five in the United States.⁶¹ The Trump administration has decided to remove such identifying questions, dismissing 3 million people's needs for transportation services, caregiver support, and delivered meals. The U.S. Census Bureau has also removed LGBT people from its 2020 report and annual survey.⁶² LGBT individuals have been ostracized and erased for so long and so immensely that the effects of such marginalization still exist today, but these policies that seek to further eradicate the government's duty to consider and provide for its citizens will only further force LGBT people into the shadows.

Underreporting has real, tangible consequences for the LGBT community but specifically for those who are victims of intimate partner violence in same-sex relationships whose specific needs cannot be addressed by the state.

V. CASE STUDY: LOUISIANA

In the past thirty years, Louisiana has had an inconsistent track record in acknowledging domestic violence. Louisiana was one of the first states to address domestic violence through regulation. In 1982, the Louisiana legislature enacted the Domestic Abuse Assistance Act, in which a victimized person can personally file and receive a temporary restraining order (TRO) or protective order (PO).⁶³ The purpose of this statute was to address the inadequate laws regarding domestic violence, prevailing societal attitudes towards domestic violence, and insufficient approach used by law enforcement officers.⁶⁴

61. Mary Emily O'Hara, *Trump Administration Removes LGBTQ Questions from Elderly Survey*, NBC NEWS (Mar. 20, 2017), <http://www.nbcnews.com/feature/nbc-out/trump-administration-removes-lgbtq-questions-elderly-survey-n735741> (citing Madeline Taterka, *7 Vital Stats About Our LGBT Elders*, SAGE USA (Oct. 8, 2014), <http://www.sageusa.org/newsevents/news.cfm?ID=136>).

62. Sabrina Siddiqui, *'Death by a Thousand Cuts': LGBT Rights Fading Under Trump*, *Advocates Say*, GUARDIAN (Mar. 30, 2017), <https://www.theguardian.com/us-news/2017/mar/30/lgbt-rights-under-trump>.

63. LA. STAT. ANN. § 46:2131 (2015).

64. *Id.*

The Louisiana legislature followed the Domestic Abuse Assistance Act by enacting the Post Separation Family Violence Relief Act (PSFVRA) in 1992.⁶⁵ This Act provides multiple forms of relief for victims⁶⁶ and addresses the often overlooked escalation of violence that often accommodates a legal separation or divorce, as well as the many ways in which law enforcement and court systems may inadvertently benefit the abusive party.

Unlike the PSFVRA, the Domestic Abuse Assistance Act has a relationship requirement for individuals seeking relief. The statute provides that there must be an intimate relationship between the two parties and includes family members, household members,⁶⁷ and dating partners.⁶⁸ While same-sex marriage is now legal,⁶⁹ until 2017 Louisiana specifically limited domestic violence law to opposite-sex couples.⁷⁰ Louisiana's law provides that domestic abuse battery solely occurs when violence committed by "one household member or family member upon the person of another household or family member."⁷¹ Such force includes an "aggravated" felony offense if the offender intentionally "engages," strangles, or burns the victim.⁷² The strangulation provision more specifically requires that the victim "is a person of the opposite sex living with the defendant [as a spouse whether married or not] in the same residence."⁷³

This legislation produced two unfortunate outcomes, primarily that the statute did not include victims of domestic violence who are (1) not living with their partner; and/or (2) in same-sex relationships. In a world where more than half of domestic violence victims are dating partners,⁷⁴ and the rates of domestic violence in same-sex relationships are roughly

65. LA. STAT. ANN. § 9:361 (1992).

66. Such relief includes a presumption that an abusive parent may not be awarded sole or joint custody of the children, that visitations with an abusive parent must be supervised (at least initially), and, in the case of sexual abuse (found through clear and convincing evidence), the abusive parent is prohibited from all contact. LA. STAT. ANN. § 9:364 (2014).

67. LA. STAT. ANN. § 46:2131 (2015). Previously, household members needed to be "of opposite gender" in order to qualify for relief under the Domestic Abuse Assistance Act.

68. *Id.*

69. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

70. Editorial, *Louisiana Law Should Protect Dating Partners, Same-Sex Abuse Victims*, TIMES-PICAYUNE (Apr. 5, 2017), http://www.nola.com/opinions/index.ssf/2017/04/domestic_violence_louisiana.html.

71. LA. STAT. ANN. § 35.3 (2016).

72. *Id.*

73. *Id.* § 35.3(B)(3).

74. Editorial, *supra* note 70. I am using the term "dating partners" to specifically refer to intimate partner abuse that occurs within relationships where the partners do not live or reside together.

the same as in heterosexual relationships, it is disgraceful for a state to not recognize prevalence of violence amongst same-sex and/or dating couples. Such a failure reveals the state's inability and unwillingness to recognize the humanity of its own citizens.

With that said, however, in May 2017, the Louisiana legislature voted to extend the state's domestic violence protections to same-sex couples.⁷⁵ While this decision by the legislature is certainly commendable, it is by no means aspirational; Louisiana was one of only two states that maintained gender-specific language in domestic violence protections post-*Obergefell v. Hodges*.⁷⁶

With a legislation that systematically failed to address the vast number of domestic victims that are not married or heterosexual until very recently, it is unsurprising how prevalent partner violence is in Louisiana: 33.5% of women and 28.4% of men have been victims of domestic violence, which includes rape, physical violence, and stalking.⁷⁷ Additionally, 32.4% of men in Louisiana have been sexually victimized at some point in their life, which is the second highest rate in the country.⁷⁸

Despite these statistics, the Louisiana legislature still appears to be largely ambivalent to prosecuting abusers and providing legal protection for survivors. Recently, State Senator Troy Brown resigned as a result of domestic violence charges launched by his girlfriend, and later his wife, both of whom were physically abused.⁷⁹ Under Louisiana law, his girlfriend, who had been repeatedly hit in plain sight on a hotel hallway floor, could only charge Brown with a misdemeanor for simple battery due to the nature of their relationship.⁸⁰ Thus, when Brown attacked his wife a few months later, the Louisiana court held it was his first domestic abuse charge, when it should have been a felony as a result of his

75. Elizabeth Crisp, *Senate Agrees to Give Louisiana Same-Sex Couples Domestic Abuse Protections*, ADVOCATE (May 30, 2017, 6:52 PM), http://www.theadvocate.com/baton_rouge/news/politics/legislature/article_fc0cf464-4592-11e7-979a-6ba63faa74a4.html.

76. 135 S. Ct. 2584 (2015).

77. NAT'L CTR. FOR INJURY PREVENTION & CONTROL, *supra* note 42, at 72-76.

78. *Id.* at 68.

79. Editorial, *supra* note 70; Julia O'Donoghue, *Troy Brown Resigns Louisiana Senate, Avoiding Expulsion*, TIMES-PICAYUNE (Feb. 16, 2017), http://www.nola.com/politics/index.ssf/2017/02/troy_brown_resigns_louisiana_s.html; Mark Ballard & David Mitchell, *Sen. Troy Brown Apologizes After Domestic Abuse Case, But Won't Be Expelled from Senate Quietly*, ADVOCATE (Jan. 13, 2017), http://www.theadvocate.com/baton_rouge/news/politics/legislature/article_dee9593e-d9d3-11e6-b2a5-df8fe639b87b.html.

80. Editorial, *Dating an Abuser Is No Less Dangerous Than Being Married to One*, TIMES-PICAYUNE (Feb. 19, 2017), http://www.nola.com/opinions/index.ssf/2017/02/troy_brown_domestic_abuse.html.

previous offense.⁸¹ Brown cited the fact that these two incidents were mere misdemeanors as a reason to stay on as state senator.⁸² Brown's lack of repentance and general failure to recognize the seriousness of his crime is indicative of Louisiana's failing policies.

Though Brown's victims were in opposite-sex relationships, and even though this abuse took place in a very public sphere with a fair amount of media scrutiny, there were still few consequences for his actions. Individuals in same-sex relationships, without legal or social resources, will have even less cause for relief. And while Louisiana is seeking to improve its domestic violence abuse statute by broadening the language to include same-sex couples,⁸³ there is still a tremendous lack of accountability for unmarried abusers.

VI. CONCLUSION

For the past few decades, the overwhelming feeling amongst Americans has been that the need to address racism and sexism in a straightforward manner is outdated. This reasoning hinges on the assumption that we as a society have improved so much in terms of our laws and attitudes towards communities that had been systematically "othered" that we do not need to substantially improve as a society. This most recent presidential election and all that has resulted from it has shown that all that has been done for marginalized peoples can be quickly undone.

Today, there is not enough political momentum to advocate for women who are victims of partner abuse, even when that violence is traditionally gendered in their favor. Women of color and/or women with disabilities, who are subjected to even more abuse due to societal marginalization, will find even less protection.

Further, men and women in same-sex relationships are not even figured into the discussion of domestic violence, as shown by the Louisiana statute, and are increasingly victimized due to the fact that we as a society are unable to separate traditional gender roles from domestic violence. This gendered understanding of domestic violence permeates all aspects of our societies in which a survivor may come into contact:

81. *Id.*

82. Ballard & Mitchell, *supra* note 79.

83. On April 10, 2017, the Louisiana legislature introduced House Bill 27, which removes the phrase "of opposite sex" from the definition of a household member in the domestic abuse battery and domestic aggravated assault charges, as well as support services for victims. LSU Manship Sch. News Serv., *Same-Sex Partners Treated Same as Heterosexuals Under Louisiana Domestic Violence Bill*, TIMES-PICAYUNE (Mar. 16, 2017), http://www.nola.com/politics/index.ssf/2017/03/domestic_violence_same_sex_cou.html#incart_river_index_topics.

police officers, judges, friends, family members, and even people from within his or her own sexual orientation community. It is not enough to just change our laws in order to address this issue; we must fundamentally detach our societal definition of partner violence from the concept of gender itself while also critically analyzing certain communities' challenges in facing violence with both an inclusive and exclusive perspective.