

# “Reel-Life” Versus “Real-Life” Survival: Filmic Domestic Violence and the Restorative Approach

Christa Millard\*

*This Note presents the first interdisciplinary scholarship analyzing the depiction of domestic violence in commercial feature film as a means of understanding the legal rights and remedies afforded survivors. I trace domestic violence law across various cultural movements and filmmaking stages, demonstrating that “reel-life” domestic violence reflects and informs the legal remedies afforded or withheld from “real-life” domestic violence survivors. Since the 2000s, independent films have depicted more accurate representations of domestic violence, promoting restorative justice policies that hold the most promise for survivors. Ultimately, these reflections call Hollywood to action. After all, film—unlike the American legal system—has transformative power, borne of its unique ability to transport viewers from physical reality, force audiences to question expectations, reshape attitudes, and envision a world different from—and undeniably better than—existing legal precedent affords.*

---

\* J.D. Class of 2021, University of California, Irvine School of Law. I dedicate this Note to the real-life survivors that I have had the pleasure and privilege of representing—your stories of survival demonstrate more strength, grit, and perseverance than any “reel-life” story on screen. I would also like to thank my Clinical Supervisors, Professors Jane Stoeber and Patricia Cyr, and my Clinic Partner Areen Mesrobian, whose intelligence and character inspire me to be an advocate in every sense of the word. Thank you to Professor Weinstein, Professor Solomon, Catherine Rosoff, Kendall McManus, Jacqueline Hackel, and Jamie Hyams, for your kindness and critical eye at each stage of the writing process. Finally, thank you to my parents Lore and Bill, my sister Rebecca, my brother William, and my partner Sam—your love and boundless patience ground me in who I am and what I’m capable of.

Introduction .....	1130
I. The State of Domestic Violence Law—A Retributive Patchwork of State and Federal Law .....	1132
II. “Reel-Life” Versus “Real-Life” Domestic Violence in Film .....	1135
A. “Don’t Trust Your Husband” and Gothic Romance (1942–1948).....	1136
B. The Lying Survivor in “Classical Hollywood” (1950s–1960s)....	1140
C. “New Hollywood”—the “Battered Woman” Fights Back (1970–2000).....	1145
D. New Themes and Similar Challenges in the “Indiewood” Era (2000s–Present) .....	1150
Conclusion—A Call to Action.....	1158

### INTRODUCTION

Movies often reflect the prevailing political and social values, perceptions, and biases of their day.<sup>1</sup> This is especially true of portrayals of domestic violence in film.<sup>2</sup> From the Gothic Romance *Gaslight* (1944) to the modern independent film *Herself* (2020), filmmakers have fixed their lenses on interpersonal violence, each portrayal offering a snapshot of popular perceptions of domestic violence with varying degrees of accuracy (or lack thereof). Despite decades of political, legal, and social capital devoted to researching and understanding the topic, misunderstandings about rape, sexual violence, and domestic violence continue to plague society at

---

1. See RICHARD K. SHERWIN, *Introduction: Law in the Age of Images, in WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE* 3, 8 (2000).

2. Domestic violence discourse has debated the use of the term “victim” versus “survivor.” See, e.g., Linda Alcoff & Laura Gray, *Survivor Discourse: Transgression or Recuperation?*, 18 *SIGNS* 260, 261–62 (1993) (describing discourse as a way to “empower victims to act constructively on [their] own behalf and thus make the transition from passive victim to active survivor”); see also Nicole Froio, *Are People Who Have Experienced Sexual Violence Victims, or Survivors?*, REWIRE NEWS GRP. (Sep. 5, 2019, 10:14 AM), <https://rewirenews.link/2Lm8tfl> [<https://perma.cc/ER5W-AA69>]. I take Elizabeth M. Schneider’s approach, believing that the “[p]ortrayal of women as *solely* victims or agents is neither accurate nor adequate to explain the complex realities” of survivors’ lives. Elizabeth M. Schneider, *Describing and Changing: Women’s Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 *WOMEN’S RTS. L. REP.* 195, 221 (1986) (emphasis added). Therefore, I use “victim” and “survivor” interchangeably in various contexts to reflect the complex realities of each.

“Domestic violence” describes “a pattern of behaviors used by one person in an intimate relationship over another for the purpose of exerting power and control over them.” Tamara Kuennen, *Not All Violence in Relationships Is “Domestic Violence,”* 86 *BROOK. L. REV.* 43, 69 (2020). This pattern of behavior includes “physical violence, sexual violence, stalking, or psychological harm by a current or former partner or spouse. This type of violence can occur among heterosexual or same-sex couples and does not require sexual intimacy.” *Intimate Partner Violence*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html> [<https://web.archive.org/web/20201010055050/https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html>] (Oct. 9, 2020). Therefore, I use “domestic violence,” “domestic abuse,” and “intimate partner violence” interchangeably for this purpose.

large.<sup>3</sup> Even more troubling, serious misunderstandings about domestic violence and sexual assault taint educated legal circles.<sup>4</sup>

Take, for example, the pervading myth that domestic violence is somehow more permissible in the context of marriage.<sup>5</sup> In May 1993, Carroll County Superior Court Judge William O’Neil received credible evidence that Stephen Sarno stalked his estranged wife, found her in bed with another man, and repeatedly beat her in the face with a flashlight—so badly that she needed seventeen stitches.<sup>6</sup> The judge reasoned that because the couple was not yet divorced (despite a year of separation), “I can’t conclude that the attack was completely unprovoked . . . I think that [finding her in bed with someone else] would provoke the average man.”<sup>7</sup> Judge O’Neil sentenced Sarno to serve a mere twenty-nine days (over consecutive weekends) for the offense.<sup>8</sup>

This shocking miscarriage of justice is not merely the remnant of a sexist, bygone era. As recently as 2015, Donald Trump’s attorney Michael Cohen told reporters, in response to Ivana Trump’s divorce deposition accusing his client of marital rape, “[Y]ou can’t rape your spouse.”<sup>9</sup> That this serious legal inaccuracy was

3. Take, for example, misunderstandings about affirmative sexual consent within the larger framework of domestic violence. To many, “[t]he idea of consent is confusing because it is confusing legally, psychologically, and socially.” Courtney Anne Groszhans, *Romance or Sexual Assault? Ambiguity of Sexual Consent in the Media and How Yes Means Yes Legislation Can Help*, 29 HASTINGS WOMEN’S L.J. 223, 224 (2018). Filmic portrayals reflect and exacerbate the confusion. “Yes Means Yes’ legislation [of affirmative consent] is a hard concept to grasp because Americans rarely see it on the movie screen.” *Id.*

4. As recently as “[f]ifty years ago, domestic violence was not even recognized as a subject of study or as a legal problem . . . Marriage—the notion that husband and wife were one and that one was the husband—made domestic violence permissible and acceptable.” Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L.Q. 353, 353 (2008).

5. Although every state criminalizes rape in the context of marriage to some degree, “[s]tatements and images endorsing marital rape” continue to pervade social myths, cultural stereotypes, and popular culture. See Lisa R. Eskow, Note, *The Ultimate Weapon?: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution*, 48 STAN. L. REV. 677, 688–89 (1996) (tracing the historical roots of the marital rape exemption and stating that, although every state today makes it illegal for a husband to rape his wife, the “[m]yths, both about sex in marriage and about the crime of rape, hinder mainstream acceptance of the pervasive reality of marital rape”).

6. Doina Chiacu, *Judge’s Remarks in Domestic Violence Provoke Uproar*, AP NEWS (June 10, 1993), <https://apnews.com/article/c52152834750101f34781ef36bb6670d> [<https://web.archive.org/web/20220325034314/https://apnews.com/article/c52152834750101f34781ef36bb6670d>]; Andrea Giampetro-Meyer & Amy Fiordalisi, *Toward Gender Equality: The Promise of Paradoxes of Gender to Promote Structural Change*, 1 WM. & MARY J. WOMEN & L. 131, 140 (1994) (reviewing JUDITH LORBER, PARADOXES OF GENDER (1994)).

7. Chiacu, *supra* note 6.

8. *Id.*

9. Tanya Basu, *Donald Trump Lawyer Sorry for Saying ‘You Can’t Rape Your Spouse,’* TIME (July 28, 2015, 11:38 AM), <http://time.com/3974560/donald-trump-rape-ivana-michael-cohen> [<https://web.archive.org/web/20171126121046/http://time.com/3974560/donald-trump-rape-ivana-michael-cohen/>].

promoted by a presidential spokesperson is troubling; that it was promoted by an attorney is perhaps even more so.

Unfortunately, when lawyers misunderstand domestic violence, survivors suffer grave consequences. Lawyers enjoy a prominent place in America's elite, educated class.<sup>10</sup> Lawyers also wield political capital to draft, enact, and shape the law.<sup>11</sup> Eventually, lawyers may become judges who conduct civil protection order hearings and evidentiary proceedings, thus serving as gatekeepers to safety and security for domestic violence survivors. Therefore, these problems are not merely theoretical—their consequences often prove lethal.<sup>12</sup>

Accurate filmic portrayals of domestic violence are not the magic bullet for effectuating survivors' legal rights and remedies—but they promise a strong start. In Part I, I introduce the legal framework and theory underpinning current domestic violence law. In Part II, I describe popular cultural portrayals of domestic violence across several filmmaking stages: (1) “Gothic Romance,” (2) “Classical Hollywood,” (3) “New Hollywood,” and (4) “Indiewood.” I explain how each filmmaking period imbues its own popularly understood domestic violence facts and fictions. Each period also reflects and informs the legal remedies afforded or withheld from domestic violence survivors. Ultimately, these reflections call on Hollywood to promote accuracy and diversity on the silver screen—in other words, to improve the stories filmmakers tell. In doing so, filmmakers and lawmakers can educate audiences, effectuating survivors' safety and security with long-term institutional reform.

#### I. THE STATE OF DOMESTIC VIOLENCE LAW—A RETRIBUTIVE PATCHWORK OF STATE AND FEDERAL LAW

There is no uniform codification of domestic violence law. Rather, domestic violence legislation is a patchwork of criminal statutes and civil protection order statutes at the state and federal level.<sup>13</sup> At the federal level, the Violence Against Women Act (VAWA) is the first—and to date, the only—federal law addressing

10. See CLIFFORD WINSTON, DAVID BURK & JIA YAN, TROUBLE AT THE BAR: AN ECONOMICS PERSPECTIVE ON THE LEGAL PROFESSION AND THE CASE FOR FUNDAMENTAL REFORM 9, 41 (2010) (reporting that law school graduates earn a 38% premium on their legal education, equivalent to an 11.3% rate of return vis-à-vis undergraduate counterparts).

11. Christian Schneickert, *Globalizing Political and Economic Elites in National Fields of Power*, 43 HIST. SOC. RSCH., no. 3, 2018, at 329, 348 fig.5 (depicting the political elite of the United States as graduates from “Harvard, Yale, lawyers, [and those] holding a PhD”).

12. See, e.g., Walter Goodman, *Review/Television; Violence in the Home, on 'Frontline,'* N.Y. TIMES (June 28, 1988), at C20, <https://www.nytimes.com/1988/06/28/arts/review-television-violence-in-the-home-on-frontline.html> [<https://perma.cc/4HMZ-EDYV>]; see also Sarah M. Buel, *The Pedagogy of Domestic Violence Law: Situating Domestic Violence Work in Law Schools, Adding the Lenses of Race and Class*, 11 AM. U. J. GENDER SOC. POL'Y & L. 309, 310 (2003).

13. April Paredes, Donalene Roberts, Lauren Ruvo & Taylor Stuart eds., *Domestic Violence*, 19 GEO. J. GENDER & L. 265, 267 (2018).

domestic violence,<sup>14</sup> primarily in the form of resource distribution to domestic violence prevention resources and research.<sup>15</sup> Therefore, almost all domestic violence law is at the state level.<sup>16</sup>

At the state level, both civil and criminal statutes address domestic violence. In criminal statutes, states penalize certain crimes—rape or assault, for example—as “domestic violence offenses” when perpetrated against family members or romantic partners.<sup>17</sup> In civil statutes, survivors can secure a binding court order that affords various types of preventative relief, called a domestic violence civil protection order (CPO).<sup>18</sup> Judicial officers grant CPOs in two forms: *ex parte* (temporary) or permanent.<sup>19</sup> Each state has its own legal standard, statutory criteria, and relief afforded survivors under each. For example, some states do not explicitly apply CPOs to “dating partners” (*vis-à-vis* spouses, former spouses, cohabitating partners, etc.),<sup>20</sup> or same-sex romantic partners.<sup>21</sup> Some states allow CPO protection for children or pets.<sup>22</sup> Although state laws tend to follow uniform patterns, this state-level variation can greatly impact survivors’ outcomes. These civil and criminal laws operate concurrently to prevent domestic violence and protect survivors.

Across criminal and civil state laws, two prevailing approaches dominate domestic violence discourse: restorative and retributive. Attorneys and mainstream audiences are likely most familiar (if not exclusively acquainted) with retributive approaches, which focus on punishment, accountability, and vindication through arrest, prosecution, and incarceration.<sup>23</sup> Retributive policies empower police

---

14. Robin R. Runge, *The Evolution of a National Response to Violence Against Women*, 24 HASTINGS WOMEN’S L.J. 433, 433 (2013).

15. *See generally* 34 U.S.C.A. § 12291 (West).

16. *United States v. Morrison*, 529 U.S. 598, 618 (2000) (holding that “the regulation . . . of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States”).

17. *See, e.g.*, CAL. FAM. CODE § 6211 (West 2021) (defining criminal domestic violence as “abuse perpetrated against . . . [a] spouse or former spouse . . . [a] cohabitant or former cohabitant . . . [a] person with whom the respondent is having or has had a dating or engagement relationship,” etc.).

18. For a fifty-state summary of CPO statutes, see American Bar Association Commission on Domestic & Sexual Violence, *Domestic Violence Civil Protection Orders (CPOs)*, AM. BAR ASS’N (June 2020) [hereinafter CPO Statutory Survey], [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/Resources/charts/cpo2020.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/charts/cpo2020.pdf) [<https://perma.cc/VQ8E-GWZB>].

19. *See* Jaime Kay Dahlstedt, *Notification and Risk Management for Victims of Domestic Violence*, 28 WIS. J.L. GENDER & SOC’Y 1, 7 (2013).

20. *See, e.g.*, MD. CODE ANN., FAM. LAW § 4-501 (West 2020).

21. North Carolina is the only state to explicitly exclude same-sex survivors from its statutory scope. *See* N.C. GEN. STAT. ANN. § 50B-1 (West 2015). However, most statutes are silent on this matter. *See, e.g.*, CAL. FAM. CODE § 6211 (West 1993).

22. *See, e.g.*, CAL. FAM. CODE § 6320(b) (West 2021) (“On a showing of good cause, the court may include in a protective order a grant to the petitioner of the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent.”).

23. Consider, for example, that the average conception of the “legal system” is based on “react[ing] to and punish[ing] crimes — assaults, batteries, harassments, stalking, and destruction of

officers, prosecutors, and judicial officers to punish those who commit acts of domestic violence. Retributive policies afford survivors' safety "[t]o the extent that arrest incapacitates their partners . . . or the criminal court issues an order for the offender to stay away from the victim of a crime of intimate partner violence."<sup>24</sup> Retributive anti-domestic violence policies include warrantless arrests in cases with probable cause of a misdemeanor domestic violence offense,<sup>25</sup> mandatory arrest statutes,<sup>26</sup> and no-drop prosecution policies.<sup>27</sup> Because they punish abusers for past behavior, retributive policies are primarily retrospective in scope.

Restorative approaches, on the other hand, proactively prevent further community harm.<sup>28</sup> Restorative justice processes "allow[] victims to define the harm done to them, requir[e] offenders to acknowledge the harm, and bring[] victims, offenders, and their supporters together to craft a plan that holds offenders accountable for and addresses the harm."<sup>29</sup> Rather than empowering police officers and prosecutors, restorative policies empower survivors. Restorative solutions divert offenders from the traditional court system into a "victim-offender mediation" process, where apology and acknowledgment—rather than incarceration—are the end goals.<sup>30</sup> Ultimately, restorative justice affords a

---

property. These are offenses for which abusers can be arrested, tried, and convicted; for which restraining orders can be issued; and which, in many states, constitute the type of evidence admissible in custody cases where domestic violence is alleged." Leigh Goodmark, *Law Is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS UNIV. PUB. L. REV. 7, 28 (2004).

24. Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J.L. & GENDER 53, 90 (2017).

25. Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1859 (1996) ("By 1988, all but two states had created an exception to the in-presence requirement to permit warrantless arrest when the officer has probable cause to believe that someone has committed a misdemeanor or violated a restraining order," and by 1995, all fifty states had done so.).

26. Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1669–70; Jill Theresa Messing, Allison Ward-Lasher, Jonel Thaller & Meredith E. Bagwell-Gray, *The State of Intimate Partner Violence Intervention: Progress and Continuing Challenges*, 60 SOC. WORK 305, 306 (2015).

27. Linda G. Mills, Commentary, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 561 (1999); Messing, Ward-Lasher, Thaller & Bagwell-Gray, *supra* note 26, at 306–07.

28. Note that restorative justice frameworks, although unfamiliar, are not new to legal discourse. Rather, "[r]estorative justice is a process that has long been used by indigenous populations and, since in [sic] the 1970s, has been making significant inroads into the American juvenile justice system." Meghan Condon, Note, *Bruise of a Different Color: The Possibilities of Restorative Justice for Minority Victims of Domestic Violence*, 17 GEO. J. POVERTY L. & POL'Y 487, 495 (2010).

29. Goodmark, *supra* note 24, at 94.

30. Sarah Curtis-Fawley & Kathleen Daly, *Gendered Violence and Restorative Justice: The Views of Victim Advocates*, 11 VIOLENCE AGAINST WOMEN 603, 606, 611 (2005).

trauma-centered alternative to the adversarial court system, which can revictimize survivors,<sup>31</sup> or worse, put their lives in peril.<sup>32</sup>

Admittedly, retributive and restorative approaches are not mutually exclusive. Although some states have experimented with retributive policies,<sup>33</sup> legislators have directed significant political capital toward constructing a retributive approach at the expense of restorative alternatives.<sup>34</sup> This is partly due to the resistance that restorative justice has met from anti-domestic violence advocates, who criticize such methods as unworkable, ineffective, or harmful to survivors.<sup>35</sup> Thus, the state of domestic violence legislation today represents a primarily retributive patchwork of state and federal criminal and civil law.

## II. "REEL-LIFE" VERSUS "REAL-LIFE" DOMESTIC VIOLENCE IN FILM

This patchwork of state and federal law did not develop in a vacuum; rather, legislators enacted civil and criminal domestic violence statutes against the backdrop of four popular cultural movements and filmmaking stages: (1) the "Gothic Romance" anomaly within the larger "Classical Hollywood" period, (2) "Classical Hollywood" in the 1930s to the 1960s, (3) "New Hollywood" from the 1970s through the 1990s, and (4) "Indiewood" portrayals from the 2000s to the present. As popular understandings about domestic violence changed, so did portrayals of survivors in film.

31. The adversarial system "is structured so women are not believed . . . . The onus is upon them to prove that an assault took place," which can be both "degrading and humiliating. So the act of violence" traumatizes survivors "and the court process further perpetuates that." *Id.* at 615–16 (alteration in original) (internal brackets omitted) (quoting comments made in anonymous interviews).

32. See Meg Obenauf, Essay, *The Isolation Abyss: A Case Against Mandatory Prosecution*, 9 UCLA WOMEN'S L.J. 263, 297–98 (1999) (describing the danger of retaliation victims face after mandatory prosecution, which "forces victims to endure a horrible experience for 'their own good,'" but "[u]nless the victim has an incredible support system, is financially secure, and is prepared to abandon her life and move far away, that batterer merely stews in jail for a year (or less, with probation), while his anger eats away at him, simmers, and grows").

33. See Laurie S. Kohn, *What's So Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517, 533 (2010). For example, the California judiciary is at the forefront of the development of the collaborative, restorative judicial process, implementing community courts for juvenile offenders, veterans, and those suffering from mental illness and substance abuse. See Juleyka Lantigua-Williams, *When Prison Is Not the Answer*, ATLANTIC (June 19, 2016), <https://www.theatlantic.com/politics/archive/2016/06/when-prison-is-not-the-answer/487703/> [https://perma.cc/SNS7-6G9J]; ROBERT V. WOLF, JUD. COUNCIL OF CAL., CALIFORNIA'S COLLABORATIVE JUSTICE COURTS: BUILDING A PROBLEM-SOLVING JUDICIARY (2005), [https://www.courts.ca.gov/documents/California\\_Story.pdf](https://www.courts.ca.gov/documents/California_Story.pdf) [https://perma.cc/VR65-RHJU].

34. See KATHLEEN J. FERRARO, NEITHER ANGELS NOR DEMONS: WOMEN, CRIME, AND VICTIMIZATION 12–13 (2006) (explaining that, in the wake of the feminist anti-domestic violence movement, "[w]omen's" needs for housing, health care, income, transportation, education, and childcare were submerged in the focus on treating domestic violence as a crime").

35. See Kohn, *supra* note 33, at 541–52 (summarizing anti-domestic violence critiques of retributive justice).

A. “Don’t Trust Your Husband” and Gothic Romance (1942–1948)

American cinema rose to prominence from the 1930s to 1960s, in a period of sound-era filmmaking often called the Classical Hollywood period.<sup>36</sup> Within the Classical Hollywood period, a unique subset of 1940s films overtly addressed domestic violence in the film noir style. Commonly referred to as the “Gothic Romance” period, the “wife-in-peril” cycle, or the “Don’t Trust Your Husband” films, these stories present an exception to the general absence of domestic violence from major filmic story arcs depicted both before (in the “Silent Era”) and after (in the “Post-War” period of Classical Hollywood).<sup>37</sup> Exemplars of the Gothic Romance include Alfred Hitchcock’s *Rebecca* (1940) and *Shadow of a Doubt* (1943), *Gaslight* (1944), and *Sleep, My Love* (1948).

Each film transformed marriage—traditionally depicted as a source of support, domesticity, and safety to women and wives<sup>38</sup>—into a symbol of oppression and fear. All presented a similar premise and narrative structure: “[t]he life of a rich, sheltered woman is threatened by an older, deranged man, often her husband.”<sup>39</sup> After the brief period of whirlwind romance, the woman’s home becomes her prison, and her husband its jailer.<sup>40</sup> The central conflict resolves when another man (typically a rival lover or admirer) comes to the defenseless protagonist’s rescue, so that the two can live happily ever after.

This series of 1940s noir dramas represents an anomaly within the rest of the Classical Hollywood period. In contrast to mainstream films produced before and after, Gothic Romantic films were produced by nearly every major production studio from 1940 to 1948, drawing prestigious directors and star-studded performances.<sup>41</sup> What accounts for this unique period of “so-called ‘women’s films’” in the 1940s?<sup>42</sup> After all, these predominately female narratives were still

36. David Neumeyer, *Music and Cinema, Classical Hollywood*, OXFORD BIBLIOGRAPHIES (Oct. 28, 2011), <https://www.oxfordbibliographies.com/view/document/obo-9780199791286/obo-9780199791286-0118.xml> [https://perma.cc/UTU6-Z62Y].

37. Adrian Martin, MYSTERIES OF CINEMA: REFLECTIONS ON FILM THEORY, HISTORY AND CULTURE 1982–2016, at 277, 278 (2018); Emanuel Levy, *Gaslight (1944): Cukor’s Masterpiece, Starring Charles Boyer and Ingrid Bergman in Oscar-Winning Performance*, EMANUEL LEVY CINEMA 24/7 (Apr. 16, 2006), <https://emanuellevy.com/review/gaslight-6/> [https://perma.cc/TTY4-LLAV].

38. This portrayal was, at least in part, due to Hollywood’s rigid self-censorship under the Hays Code. Here, the Code had specific language enforcing strict traditional values that upheld the institution of marriage. See MOTION PICTURE PRODUCTION CODE (AS PUBLISHED 31, MARCH, 1930), <https://www.asu.edu/courses/fms200s/total-readings/MotionPictureProductionCode.pdf> [https://perma.cc/VB9J-PESZ] (“The sanctity of the institution of marriage and the home shall be upheld.”).

39. Levy, *supra* note 37.

40. Diane Waldman, “At Last I Can Tell It to Someone!”: Feminine Point of View and Subjectivity in the Gothic Romance Film of the 1940s, CINEMA J., Winter 1984, at 29, 29–30.

41. *Id.* at 29.

42. Samm Deighan, *Gothic Film in the ‘40s: Doomed Romance and Murderous Melodrama*, DIABOLIQUE MAG. (July 28, 2016), <https://diaboliquemagazine.com/gothic-cinema-40s-doomed-romance-murderous-melodrama/> [https://perma.cc/WTR9-ZXMZ].

written, produced, and directed by men.<sup>43</sup> As always, the economics of the filmmaking industry drove the demand for Gothic Romantic pictures. American involvement in World War II brought ten million men to the battlefield and away from the home front.<sup>44</sup> Thus, film studios had an economic interest in producing Gothic Romantic films when women were thought to be the primary moviegoers.<sup>45</sup>

Perhaps the greatest example of the Gothic Romance is George Cukor's *Gaslight* (1944), based on a British film and play by the same name. Throughout the film, a handsome and charming Gregory Anton convinces his young wife Paula of her own insanity by deliberately misplacing their personal possessions, creating the creaking of footsteps in the attic, and flickering the gas lamps in their house. He accomplishes this while isolating Paula from the outside world, explaining that her mental state is "perhaps . . . why I cannot let you meet people."<sup>46</sup>

*Gaslight* and its Gothic Romantic counterparts dramatized the psychological aspects of domestic abuse, isolation, and control. Thus, *Gaslight* brought the modern phrase "gaslighting" to life, depicting a type of psychological abuse where the abuser manipulates the victim into doubting their own mental stability.<sup>47</sup> For instance, Gregory Anton isolates Paula from her community, manipulates, and controls her. These behaviors provided a picture of what Dr. Evan Stark would later define as "coercive control."<sup>48</sup> Rather than limiting abuse to a physical fight, coercive control frames domestic violence as an ongoing strategy to deprive survivors of "money, food, access to communication or transportation[,] . . . family, friends, and other supports."<sup>49</sup> Although the systematic "micro-regulation" of a

43. See generally Katherine J. Wu, *Hollywood's 'Golden Age' Saw Massive Dip in Female Film Representation*, SMITHSONIAN MAG. (Apr. 3, 2020), <https://www.smithsonianmag.com/smart-news/hollywoods-golden-age-saw-massive-dip-female-representation-films-180974573/> [<https://perma.cc/S98J-4EAE>]; see also Naomi McDougall Jones, *When Hollywood's Power Players Were Women*, ATLANTIC (Feb. 9, 2020), <https://www.theatlantic.com/culture/archive/2020/02/naomi-mcdougall-jones-wrong-kind-of-women-excerpt/606277/> [<https://perma.cc/8DMJ-RJE3>] (explaining that, in the 1940s, "[a]s the maverick operations of the silent-film era turned into male-dominated, vertically integrated studios that controlled films' development, production, and distribution, many women were squeezed out or left behind by an industrialized system that did not mesh with their more individualized approach to filmmaking").

44. *Research Starters: The Draft and World War II*, NAT'L WORLD WAR II MUSEUM NEW ORLEANS, <https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/draft-and-wwii> [<https://perma.cc/JU8A-DCG6>] (last visited Apr. 2, 2022).

45. Waldman, *supra* note 40, at 30.

46. GASLIGHT (Metro-Goldwyn-Mayer 1944).

47. See Arwa Haider, *A Cultural History of Gaslighting*, BBC (Nov. 22, 2019), <https://www.bbc.com/culture/article/20191122-cultural-history-of-gaslighting-in-film> [<https://perma.cc/8K5N-648X>]; see also Alissa Wilkinson, *What is Gaslighting? The 1944 Film Gaslight Is the Best Explainer*, VOX (Jan. 21, 2017, 10:00 AM), <https://www.vox.com/culture/2017/1/21/14315372/what-is-gaslighting-gaslight-movie-ingrid-bergman> [<https://web.archive.org/web/20220206000146/https://www.vox.com/culture/2017/1/21/14315372/what-is-gaslighting-gaslight-movie-ingrid-bergman>].

48. See generally EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (2007).

49. *Id.* at 5.

survivor's life does not leave visible cuts or bruises, its latent damage manifests in fear or distress,<sup>50</sup> substance abuse,<sup>51</sup> or post-traumatic stress disorder.<sup>52</sup>

Unfortunately, even today many examples of emotional abuse remain unnoticed and unpunished because they do not leave physical marks.<sup>53</sup> In civil cases, for example, two-thirds of state statutes require victims show physical violence or threat of physical violence by a preponderance of the evidence to obtain a CPO.<sup>54</sup> Some CPO statutes have adopted the language of coercion and control, but still require survivors prove that coercion by force or threat of force.<sup>55</sup> Survivors fare no better in criminal court, where most states limit criminal domestic violence to assault or physical violence.<sup>56</sup> Throughout litigation, judges and judicial officers tend to downplay the emotional, psychological, and economic manifestations of domestic violence.<sup>57</sup>

Only two states have pioneered a legal remedy for survivors of non-violent domestic violence: California and Hawaii.<sup>58</sup> Both states have explicitly incorporated “coercion and control” as a basis for a CPO, although the exact wording of each statute differs slightly.<sup>59</sup> Under both new statutes, non-violent, coercive examples of domestic violence—such as isolating survivors from friends and family, forcing financial dependency, and restricting survivors’ movements—entitle survivors to

50. Joan S. Meier, *Dangerous Liaisons: A Domestic Violence Typology in Custody Litigation*, 70 RUTGERS U. L. REV. 115, 147 (2017) (“Interestingly, evidence has also emerged that suggests that non-violent coercive control by itself can cause virtually the same degree of fear and distress to the victim as coercive control accompanied by violence.”).

51. Kristy Candela, Note, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 FAM. CT. REV. 112, 115 (2016).

52. Alexandra Michelle Ortiz, Note, *Invisible Bars: Adapting the Crime of False Imprisonment to Better Address Coercive Control and Domestic Violence in Tennessee*, 71 VAND. L. REV. 681, 689 (2018).

53. David K. Warren, Note, *A Man's Home Is His Castle, But It Has a Secret Dungeon: Domestic Violence Victims Need an Amendment to Florida's All-Party Consent Law*, 69 FLA. L. REV. 223, 238 (2017) (“Unfortunately, visible proof does not exist in many cases. Much of the abuse, especially the kind of emotional and psychological coercion that facilitates the abuser’s control and leads to more violent forms of abuse, does not leave physical marks.”).

54. Candela, *supra* note 51, at 113.

55. See, e.g., COLO. REV. STAT. ANN. § 13-14-101(2) (West 2021) (“[C]oercion’ includes compelling a person by force, threat of force, or intimidation to engage in conduct from which the person has the right or privilege to abstain . . .”).

56. Ortiz, *supra* note 52, at 688.

57. See Schneider, *supra* note 4, at 356 (noting that, despite the modern understanding that “domestic violence involves a wide range of behaviors including physical abuse, verbal abuse, threats, stalking, sexual abuse, coercion, and economic control[,] . . . there are critical problems in translating these broader perspectives on abuse to lawyers, judges, and other professionals who still tend to see a physical focus . . .”); see also Nancy Ver Steegh, *The Uniform Collaborative Law Act and Intimate Partner Violence: A Roadmap for Collaborative (and Non-Collaborative) Lawyers*, 38 HOFSTRA L. REV. 699, 711 (2009) (“Many civil state statutory definitions promote a one-size-fits-all approach to intimate partner violence by focusing on physical acts (in this case pushing) without adequately taking into account potential underlying dynamics, such as those involving coercion and control, which can dramatically alter the meaning of the violence.”).

58. CAL. FAM. CODE § 6320(c) (West 2021); HAW. REV. STAT. § 431:10-217.5 (2021).

59. CAL. FAM. CODE § 6320(c); HAW. REV. STAT. § 431:10-217.5.

petition for a CPO.<sup>60</sup> Therefore, California and Hawaii have finally afforded survivors the protection of a CPO in response to “real-life” domestic violence dynamics; unfortunately, they are the only two states to do so.<sup>61</sup> Therefore, 1940s Gothic Romantic films brought the non-violent psychological aspects of domestic violence out of the private sphere and into the public, even before police, prosecutors, and courts enforced legal rights and remedies tied to them.<sup>62</sup>

At the conclusion of *Gaslight*, the male protagonist Brian Cameron of Scotland Yard rushes to Paula’s aid, restoring Paula’s safety and belief in her own sanity; thus, Gothic Romantic films introduced contemporary themes like emotional abuse and domestic violence while reinforcing traditional, predefined gender roles within these abusive relationships. For example, Gothic Romantic films exclusively depicted heterosexual relationships since the Hays Code strictly forbade films with any reference to “sex perversion” during the Classical Hollywood period (which included any “expression of the homoerotic or homosexual”).<sup>63</sup> Within these exclusively heterosexual romantic relationships, the Gothic Romance reinforced a “beast-in-the-boudoir” narrative in which “the monster is coded as male, the victim female. Typically, her vulnerability and sexuality are heightened because she is a comely maiden wearing a night-gown or a wedding-dress or some other light-coloured garment.”<sup>64</sup> The female victim never resolves the central conflict herself; whether it was Bruce Elcott of *Sleep, My Love* or Brian Cameron of *Gaslight*, a handsome love interest always saves the helpless protagonist to resolve the film’s central conflict. As a result, Gothic Romance depicted women primarily as helpless domestic violence “victims” (who need saving) rather than “survivors” (who, with the aid of support networks, can save themselves).<sup>65</sup>

60. CAL. FAM. CODE § 6320(c); HAW. REV. STAT. § 431:10-217.5.

61. See CPO Statutory Survey, *supra* note 18.

62. See Sally F. Goldfarb, *Violence Against Women and the Persistence of Privacy*, 61 OHIO ST. L.J. 1, 22–23 (2000).

63. This traditional sexual ethical code was not merely theoretical or informal. Until the late 1950s, “American commercial film was subject to rigid regulation from within the industry” under the strict “Hays Code,” (or, in shorthand, simply “the Code”) named after the first president of the Motion Picture Producers and Distributors of America (MPPDA), who oversaw the self-censorship project. TERRI MURRAY, *STUDYING FEMINIST FILM THEORY* 47 (Auteur rev. ed. 2019). The Code “defined the moral and ideological limits of the classic Hollywood film for a period of about 20 years . . . encompass[ing] law and order . . . religion . . . and patriarchal values.” *Id.* at 47–48. See also Leonard J. Leff, “Come on Home with Me”: “42nd Street” and the Gay Male World of the 1930s, 39 CINEMA J., Fall 1999, at 3, 4.

64. Barry Keith Grant, *Introduction*, in *THE DREAD OF DIFFERENCE: GENDER AND THE HORROR FILM* 1–5 (2nd ed. 2015).

65. See Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 325 (2011) (contrasting theoretical frameworks of domestic violence survivorship, namely, the “early theories [of] learned helplessness” versus modern research that “shows that women who experience abuse are typically active survivors who are highly motivated to terminate the violence and are vigorously engaged in help-seeking efforts and the process of surviving violence”).

These portrayals reflect negatively and broadly on domestic violence survivors, reinforcing stereotypes that continue in modern social discourse.<sup>66</sup> This male-female binary contributes to the expectation that domestic violence survivors behave a certain way—for example, that survivors “assume the demeanor of helplessness, to act as if they are without capacity to exercise their rights independently.”<sup>67</sup> First, these expectations explicitly impact state statutory CPO requirements,<sup>68</sup> requiring that survivors demonstrate fear to secure state-sanctioned protection rather than the range of emotions survivors experience in response to domestic violence.<sup>69</sup> Second, these expectations implicitly impact credibility judgments made by domestic violence agencies, prosecutors, judges, and juries—which ultimately affect survivors’ outcomes.<sup>70</sup> The rescuer figure and the “wrong man ideology” (suggesting the victim’s “faulty judgment” or “naïveté” led her “to marry the wrong man”) only reinforces judges’ and juries’ misconception that abused persons are to blame for their own abuse.<sup>71</sup>

Therefore, Gothic Romantic films introduced progressive themes while reinforcing traditional stereotypes. Films like *Gaslight* paved the way for modern-day discussions of emotional and psychological abuse tactics, long before legislators codified protection against them. But the Gothic Romance’s exclusively gender-binary character development and plot resolution suggested that vulnerable female survivors ought to seek protection from male friends, neighbors, and rival lovers—rather than pursue the legal rights and remedies that would allow survivors to protect themselves.

### B. *The Lying Survivor in “Classical Hollywood” (1950s–1960s)*

Films from the 1930s through the 1960s (here, the Classical Hollywood period) rarely, if ever, tackled the topic of domestic violence head-on, instead

66. Pamela Hill Nettleton, *Domestic Violence in Men’s and Women’s Magazines: Women Are Guilty of Choosing the Wrong Men, Men Are Not Guilty of Hitting Women*, 34 WOMEN’S STUD. COMM’N 139 (2011) (reporting an enduring expectation in women’s magazines that women bear responsibility for domestic violence, in a ten-year qualitative narrative study).

67. Deborah M. Weissman, *The Politicization of Domestic Violence*, in THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES 38, 45 (Jane K. Stoeber ed., 2019).

68. Laurie S. Kohn, *Barriers to Reliable Credibility Assessments: Domestic Violence Victim-Witnesses*, 11 AM. U. J. GENDER SOC. POL’Y & L. 733, 737 (2003).

69. Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 114 (2008) (describing the “remarkably diverse” range of survivors’ emotions and stories, including “stories of fear, frustration, anger, protectiveness, self-image, racism, homophobia, lack of options, and lack of resources” that “frequently get distilled down to the story of the paradigmatic victim” for the sake of a judge and jury).

70. See, e.g., Alana Bowman, *A Matter of Justice: Overcoming Juror Bias in Prosecutions of Batterers Through Expert Witness Testimony of the Common Experiences of Battered Women*, 2 S. CAL. REV. L. & WOMEN’S STUD. 219, 241–48 (1992) (reviewing misconceptions jurors carry into domestic violence trials).

71. See DIANE L. SHOOS, *Gaslight, Gaslighting, and the Gothic Romantic Film*, in DOMESTIC VIOLENCE IN HOLLYWOOD FILM: GASLIGHTING 39, 56–57 (2017).

relegating domestic violence to a minor character's development within a larger story arc. Take, for example, Laura Manion's portrayal in the courtroom drama *Anatomy of a Murder* (1959).<sup>72</sup> *Anatomy of a Murder* chronicles small-town attorney Paul Biegler's defense of Frederick Manion for the murder of local bartender, Barney Quill. Biegler employs the "heat of passion" defense with evidence that Quill raped Manion's wife Laura. Unfortunately for Biegler, throughout the movie and the trial, Laura Manion's credibility as a rape victim deteriorates. Laura Manion's open flirtation and questionable marital history lead Biegler and the audience to question Laura Manion's complicity in the sexual encounter. Laura Manion was a beautiful, seductive woman—clearly not the "right kind" of credible sexual assault victim, especially within the traditional sexual ethical framework of the Hays Code.<sup>73</sup> This discrepancy forces the audience to ask: was Laura Manion raped? If she was not, why did she lie?

The film answers these questions with another (subtler) example of gender-based violence. On direct examination, Frederick Manion's cellmate testifies that Manion had his lawyer completely fooled. In jail, Manion purportedly bragged that "when he got out, the first thing he was going to do was kick that bitch from here to kingdom come."<sup>74</sup> Thus, domestic violence affords the audience a morally digestible through-line between Laura Manion's extramarital affairs and purported rape. Laura Manion is not a "credible" victim because she falsified her rape for fear of her abusive husband. Here, filmmakers afford viewers a reasonable explanation for the commonly held myth that women often lie about having been raped.<sup>75</sup> As Ms. Manion flees the courtroom to wait in the car, she asks Biegler to "tell [Frederick Manion] I'm waiting to get kicked to kingdom come."<sup>76</sup> The audience hears (but does not see) that Laura Manion wept as she and her exonerated husband fled town. The film does not resolve the abuse Laura Manion suffers; however, with domestic violence as a sub-plot, Laura Manion's tragic story is ancillary and therefore largely irrelevant to the overarching courtroom drama.

---

72. ANATOMY OF A MURDER (Carlyle Productions 1959).

73. See Murray, *supra* note 63, at 47–48 (explaining that, according to the Hays Code, "films had to be sympathetic to marriage as an institution and 'impure love' could not be represented as attractive").

74. ANATOMY OF A MURDER (Carlyle Productions 1959).

75. Note that the prevailing myth that women often lie about having been raped "is one of the most hotly contested discourses within the area of rape and rape myths. It has been circulating in legal, political, and social discourses for centuries . . . Despite how commonly this myth reemerges, statistics gathered by researchers in this field do not bear it out; rather, 'of all rapes (those reported and not reported to the police), 0.005% are false allegations. And importantly, although false rape claims are reprehensible, it is important to acknowledge that they are also incredibly rare. Clearly, as a group, victims are very unlikely to report rapes to the police, and even less likely to make false claims.'" Holly Boux, "If You Wouldn't Have Been There That Night, None of This Would Have Happened to You": Rape Myth Usage in the American Judiciary, 40 WOMEN'S RTS. L. REP. 237, 244–45 n.43 (2019) (citing Joanne Belknap, *Rape: Too Hard to Report and Too Easy to Discredit Victims*, 16 VIOLENCE AGAINST WOMEN 1335, 1335 (2010)).

76. ANATOMY OF A MURDER (Carlyle Productions 1959).

Laura Manion's story bears striking similarity to that of another tragic witness: Mayella Ewell of *To Kill a Mockingbird* (1962). *To Kill a Mockingbird* is a coming-of-age story in the Depression-era South from a circumspect adult Scout Finch. Scout's father, Atticus Finch, faces significant personal and professional backlash after he chooses to defend Tom Robinson, a Black man falsely accused of raping a white woman. Mayella Ewell, the alleged rape victim, vehemently testifies that Tom Robinson "caught [her], he choked [her], and he took advantage of [her]."<sup>77</sup>

But Mayella Ewell, like Laura Manion, is an unreliable witness, offering false testimony in a high-stakes criminal trial. Through astute questioning, circumstantial evidence, and Tom Robinson's direct examination, Atticus Finch posits a narrative in stark contrast with Mayella's testimony. Atticus's first question on cross-examination is simply, "Miss Mayella, is your father good to you?"<sup>78</sup> After a polite but astute cross-examination, Atticus concludes that Mayella Ewell—beaten and isolated by her alcoholic father, Bob Ewell—sought out Tom Robinson's company. Thus, Mayella "broke[] a rigid and time-honored code of [Southern] society" by kissing a Black man and was "beaten savagely" by her father because of it.<sup>79</sup> Finally, to "destroy the evidence of her offense," the Ewells falsely accused Tom of rape. In closing, Atticus harshly characterizes Mayella as a "victim of cruel poverty and ignorance."<sup>80</sup> Atticus begs the jury not to "associate[] with minds of their caliber."<sup>81</sup> In other words, while condemning Southern racial injustice, Atticus Finch employs sexism and classism in its stead.

Unfortunately, portraying Laura Manion and Mayella Ewell as unreliable "reel-life" abuse victims damages the credibility of "real-life" abuse victims generally. First, viewers are conditioned to associate Laura Manion and Mayella Ewell's sexually predatory behavior with dishonesty. Thus, these and other courtroom dramas in the Classical Hollywood period reinforce gendered conceptions of honesty that associate female credibility with "virginity, chastity, [and] fidelity to a husband."<sup>82</sup> These fictionalized, false accusations threaten the credibility of female rape victims at large. This is particularly problematic, considering sexual assault and domestic violence are crimes where the victim is

---

77. *TO KILL A MOCKINGBIRD* (Brentwood Productions & Pakula-Mulligan 1962).

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. Julia Simon-Kerr, Note, *Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment*, 117 *YALE L.J.* 1854, 1862 (2008) (citing ADRIENNE RICH, *Women and Honor: Some Notes on Lying*, in *ON LIES, SECRETS, AND SILENCE: SELECTED PROSE 1966–1978*, at 412, 412 (W.W. Norton & Co. rev. ed. 1995))

often the only witness to the abuse<sup>83</sup> and consent is directly at issue at trial.<sup>84</sup> Admittedly, gender-based credibility issues and their legal consequences have garnered significant critical attention during and after the popularization of the #MeToo movement.<sup>85</sup> However—perhaps in response to #MeToo<sup>86</sup>—survivors’ stories are now met with more disbelief and skepticism than before.<sup>87</sup>

These credibility issues highlight one major reason the retributive justice system effectuates less safety and security for survivors as compared to a survivor-centered restorative justice system. For example, the traditional retributive justice system requires adversarial competition between two sides.<sup>88</sup> In the domestic violence context, this forces the survivor to face her fears and her abuser face-to-face,<sup>89</sup> provide corroborating testimony,<sup>90</sup> and recount personal trauma subject to rigorous, high-pressure cross-examination.<sup>91</sup> Ultimately these high-stakes credibility contests determine the survivor’s legal outcome in the criminal<sup>92</sup> or civil context.<sup>93</sup> Considering the re-traumatization survivors suffer when confronting their abuser,<sup>94</sup> the difficulty securing evidence in domestic violence cases,<sup>95</sup> and the gender-based credibility challenges survivors face,<sup>96</sup> it is no wonder survivors are often hesitant to assert their legal rights in an adversarial system that continually scrutinizes their trauma.<sup>97</sup> However, a restorative justice approach requires both

83. Jane H. Aiken & Jane C. Murphy, *Evidence Issues in Domestic Violence Civil Cases*, 34 FAM. L.Q. 43, 44 (2000).

84. Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PA. L. REV. 1, 4 (2017).

85. Aníbal Rosario-Lebrón, *Evidence’s #MeToo Moment*, 74 U. MIA. L. REV. 1, 54 (2019).

86. *Id.* at 55.

87. See, e.g., *After a Year of #MeToo, American Opinion Has Shifted Against Victims*, ECONOMIST (Oct. 15, 2018), <https://www.economist.com/graphic-detail/2018/10/15/after-a-year-of-metoo-american-opinion-has-shifted-against-victims> [<https://perma.cc/5ZHH-JC4D>].

88. See *Maryland v. Craig*, 497 U.S. 836, 846 (1990) (noting “rigorous adversarial testing” is the “norm of Anglo-American criminal proceedings”); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947) (Jackson, J., concurring) (“[A] common law trial is and always should be an adversary proceeding.”); Stephan Landsman, *A Brief Survey of the Development of the Adversary System*, 44 OHIO ST. L.J. 713, 716 (1983) (chronicling the history of the adversarial system and describing the modern adversarial trial process as “highly competitive” and “tend[ing] to promote a win-at-any-cost attitude”).

89. Negar Katirai, *Retraumatized in Court*, 62 ARIZ. L. REV. 81, 85 (2020); Tom Lininger, *Bearing the Cross*, 74 FORDHAM L. REV. 1353, 1355 (2005). See generally William T. Pizzi, *The American “Adversary System”?*, 100 W. VA. L. REV. 847 (1998).

90. See Kohn, *supra* note 33, at 521.

91. Katirai, *supra* note 89, at 85–86.

92. Rosario-Lebrón, *supra* note 85, at 53.

93. Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 414 (2019).

94. See generally Katirai, *supra* note 89; Lininger, *supra* note 89.

95. Dana Harrington Conner, *Abuse and Discretion: Evaluating Judicial Discretion in Custody Cases Involving Violence Against Women*, 17 AM. U.J. GENDER SOC. POL’Y & L. 163, 183 (2009); Aiken & Murphy, *supra* note 83.

96. See generally Epstein & Goodman, *supra* note 93.

97. See Kohn, *supra* note 33, at 528. Note that this hesitancy is particularly pronounced in communities of color. Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics*,

parties to actively take part in healing broken relationships<sup>98</sup> by crafting long-term collaborative solutions,<sup>99</sup> encouraging the offender to apologize, and allowing the survivor to forgive<sup>100</sup>—in stark contrast to the retributive focus on truth, credibility, and zero-sum outcomes. This active participation promises increased perceptions of procedural fairness,<sup>101</sup> protecting survivors by increasing the likelihood that offenders comply.<sup>102</sup>

Ultimately, in both films, the abuse each victim suffers is irrelevant to the primary story arc. Unfortunately, it is hardly surprising that in Classical Hollywood dramas, domestic violence was a private issue rather than a legal issue, and thus, was not redressed in the courtroom. Until the 1970s, all stakeholders in the criminal justice system treated domestic violence “as a private family matter—one that implicate[d] issues and conflicts beyond the scope of proper judicial intervention.”<sup>103</sup> In the eyes of the law, domestic violence victims lacked any legal recourse—even in instances of beating, incest, or marital rape.<sup>104</sup> Judges relied on decades of legal precedent that treated domestic violence as a natural circumstance of marriage, unless it resulted in near-death injury.<sup>105</sup> Police officers simply advised the parties to “cool off”<sup>106</sup> or informally mediated between them<sup>107</sup>—that is, if the police chose to respond at all.<sup>108</sup> Films in this era reflected and reinforced the

*and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1257 (1991) [hereinafter *Mapping the Margins*].

98. JENNIFER J. LEWELLYN & ROBERT HOWSE, RESTORATIVE JUSTICE: A CONCEPTUAL FRAMEWORK 10, 41 (1998).

99. See Kohn, *supra* note 33, at 532.

100. See Heather Strang & Lawrence W. Sherman, *Repairing the Harm: Victims and Restorative Justice*, 2003 UTAH L. REV. 15, 28 (“[A]pology is usually seen as central to the process of restoration.”).

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

102. See Kohn, *supra* note 33, at 569.

103. Jennifer L. Thompson, Comment, *Who’s Afraid of Judicial Activism? Reconceptualizing a Traditional Paradigm in the Context of Specialized Domestic Violence Court Programs*, 56 ME. L. REV. 407, 414–15 (2004); see Aiken & Murphy, *supra* note 83. See generally R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY* 60 (1979) (explaining how American and European laws did little to protect women from abuse until the 1970s).

104. Goldfarb, *supra* note 62.

105. See *State v. Edens*, 95 N.C. 693, 696 (1886) (“[O]nly where the battery is so great and excessive as to put life and limb in peril, or where permanent injury to person is inflicted . . . that the law interposes to punish.”), *abrogated by* *Virmani v. Presbyterian Health Servs. Corp.*, 515 S.E.2d 675 (1999); *State v. Oliver*, 70 N.C. 60, 61–62 (1874) (per curiam) (“If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.”); *State v. Rhodes*, 61 N.C. (Phil.) 453, 454 (1868) (per curiam) (“The courts have been loth to take cognizance of trivial complaints arising out of the domestic relations—such as master and apprentice, teacher and pupil, parent and child, husband and wife.”), *overruled by* *Virmani*, 515 S.E.2d 675.

106. Goodmark, *supra* note 23, at 13.

107. Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 14 (1999).

108. Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970–1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 47 (1992).

prevailing social, cultural, and legal understanding that domestic violence belonged in the private domestic sphere, not in a court of law.

On the one hand, Laura Manion and Mayella Ewell introduced American moviegoers to issues that, at the time, were often excluded from public discourse. However, framing sexual assault allegations as outright lies perpetuates the Classical Hollywood stereotype that associates female honesty with sexual fidelity and purity. These credibility issues derived from and contributed to the credibility discount many survivors face today. Finally, these portrayals afforded survivors no legal rights or remedies and reinforced the supposition that domestic violence should be addressed in the home and not the courtroom.

C. “New Hollywood”—the “Battered Woman” Fights Back (1970–2000)

The feminist movement of the 1970s and 1980s challenged traditional social and legal structures that labelled domestic violence a private issue to be handled at home.<sup>109</sup> In response, all fifty states and the District of Columbia enacted laws affording domestic violence sufferers explicit statutory rights and remedies.<sup>110</sup>

During this period, domestic violence advocacy was heavily influenced by Lenore Walker’s three-stage “cycle of violence” theory, popularized in the 1980s and outlined in her scholarship on Battered Woman’s Syndrome (BWS).<sup>111</sup> The three distinct phases of Dr. Walker’s theoretical cycle of violence include (1) tension building, characterized by a victim’s “walking on eggshells” to avoid upsetting a demanding or controlling abuser; (2) the violent episode, exemplified by a dangerously violent attempt to hurt or kill the victim; and (3) the honeymoon phase, characterized by gifts, apologies, and promises to change.<sup>112</sup> Originally, Dr. Walker’s work was twofold. First, her work relied on the cycle of violence to explain common behaviors and stages within abusive relationships. Second, it posited “learned helplessness” as the defining characteristic of a battered woman to explain “why battered women do not attempt to free themselves from a battering relationship.”<sup>113</sup> Walker has since revised her theories of BWS, since they have come under fire

---

109. “Much has been written on the advent of the antidomestic violence movement that evolved during the 1970s and 1980s. During this period, criminal justice remedies emerged as the principal response to domestic violence as a way to correct a legacy of judicial indifference to violence in the ‘private’ matters of the home and the norms that sanctioned the prerogative of punishment to husbands over wives.” Deborah M. Weissman, *The Community Politics of Domestic Violence*, 82 BROOK. L. REV. 1479, 1510 (2017). For an in-depth summary of the anti-domestic violence movement within the feminist social movement of the 1970s and 1980s, see Mimi E. Kim, *The Coupling and Decoupling of Safety and Crime Control: An Anti-Violence Movement Timeline*, in THE POLITICIZATION OF SAFETY, *supra* note 65, at 15, 16–22.

110. For an in-depth historical overview of the development of Civil Protection Order statutes, see Stoever, *supra* note 65, at 306 n.6.

111. See generally LENORE E. WALKER, THE BATTERED WOMAN (1979).

112. *Id.* at 55.

113. LENORE E. WALKER, *The Psychosocial Theory of Learned Helplessness*, reprinted in DOMESTIC VIOLENCE LAW 74, 75–76 (Nancy K.D. Lemon ed., 4th ed. 2013).

from domestic violence advocates for diminishing survivors' agency within the cycle of coercion and control, and for saddling the victim with the duty to change her circumstances.<sup>114</sup>

With feminist perspectives and the Battered Women's Movement at the political forefront, movies and films portraying these topics soon followed.<sup>115</sup> Unlike Gothic Romances of the 1940s, movies about domestic violence in the "New Hollywood" era resolved the central conflict (abuse) when the victim (always female) fought back and defended herself. Movies about domestic violence enjoyed big budgets and star-studded performances, like Farrah Fawcett's appearance in the made-for-television movie *The Burning Bed* (1984) and Jennifer Lopez's action-packed performance as the character Slim in *Enough* (2002).

*Sleeping With the Enemy* (1991) exemplifies the big-budget New Hollywood film portraying domestic violence.<sup>116</sup> It was a major box-office success,<sup>117</sup> with America's sweetheart Julia Roberts as the protagonist-victim Laura Burney, who successfully escapes, outsmarts, and fights her abuser to safety. The film was heavily influenced by Dr. Walker's "cycle of violence" theory, and in the first carefully crafted twenty minutes, Martin and Laura demonstrate with chilling accuracy the emotional, sexual, and physical violence victims often experience in abusive relationships. From the outset, Laura navigates an elaborate system of rules—changing her dress, aligning hand towels, rearranging the pantry—at her obsessive-compulsive, millionaire husband Martin's command, with the nervous charm of a dog scared to perform the wrong trick (the "tension building phase"). Interestingly, this segment highlights the oft-overlooked nonviolent elements of the tension building stage, because the audience recognizes Laura's vulnerability and despair as she tries to meet Martin's constant domestic demands. Despite Laura's best efforts to placate her husband, an offhand comment from their Cape Cod neighbor ("That must be your wife that I keep seeing staring down from the window . . . . You're a lucky man.") drives Martin into a jealous rage (the "violent

---

114. See Mary Ann Dutton with Sue Osthoff & Melissa Dichter, *Update of the "Battered Woman Syndrome" Critique*, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN (Aug. 2009), [https://vawnet.org/sites/default/files/materials/files/2016-09/AR\\_BWSCritique.pdf](https://vawnet.org/sites/default/files/materials/files/2016-09/AR_BWSCritique.pdf) [<https://perma.cc/NK7V-UU2K>]; see also Edward Gondolf & Ellen Fisher, *The Survivor Theory*, reprinted in DOMESTIC VIOLENCE LAW, *supra* note 113, at 80, 82 ("Feminist critics . . . have strongly objected to the implication that battered women provoke or prolong abuse . . . .").

115. Elizabeth Jean Hornbeck, *Who's Afraid of the Big Bad Wolf?: Domestic Violence in The Shining*, 42 FEMINIST STUD. 689, 690 (2016).

116. SLEEPING WITH THE ENEMY (20th Century Studios 1991).

117. See *Sleeping with the Enemy* (1991), NUMBERS, <https://www.the-numbers.com/movie/Sleeping-with-the-Enemy#tab=summary> [<https://perma.cc/9JG7-FBAA>] (last visited Apr. 2, 2022) (reporting that *Sleeping with the Enemy* grossed over \$100 million in domestic box office sales); see also *Sleeping with the Enemy*, BOX OFFICE MOJO BY IMDBPRO, <https://www.boxofficemojo.com/release/r13429991937/weekend/> [<https://perma.cc/Q5KB-L8HT>] (last visited Apr. 2, 2022) (reporting that *Sleeping with the Enemy* grossed over \$13.5 million on its opening weekend, compared to its total production budget of \$19 million).

episode"). Martin violently knocks Laura to the floor, driving his foot full-force into her stomach for good measure. Moments later, he sweetly embraces her, calls her his "princess," and offers her flowers in apology (the "honeymoon phase").

The scene concludes with physical intimacy between the two. However, the viewer must grapple with cognitive dissonance brought on by two irreconcilable perspectives. From Martin's perspective, his physical intimacy atones for his violent outburst. From Laura's perspective—her face expressionless, bruises already forming on her limp body—the experience is clearly a routine, nonconsensual occurrence. The result for the audience is an overwhelming feeling of horror and disgust, as the viewer realizes a sexual assault is taking place. Even more shocking, Laura's blank acquiescence suggests to the audience an even more horrifying truth: this is just one of countless assaults and abuses at Martin's hands. The film's outset resolves the cinematic cycle of violence.

However, this is where the cinematic commitment to realism ends. Laura surprises the audience—and her abusive husband—with a daring (and unbelievable) escape plan. During a violent storm, Laura surreptitiously leaps overboard and fakes her own death at sea. Viewers learn that Laura spent the last several months packing, hoarding cash, and teaching herself to swim. As Laura grabs her bags to race out the door, she abandons her wedding ring in the toilet, literally and symbolically abandoning Martin's dominance over her. She hops on a Greyhound bus to small-town Iowa under the alias "Sarah Waters." Finally, after moving across the country, "Sarah" rents a charming Victorian house, strikes up a romantic relationship with her affable neighbor, and reunites with her ailing mother—seemingly with ease, in a few quick and upbeat scenes.

Her charmed double-life does not last long. A fortuitous phone call and the resurgence of Laura's wedding ring lead Martin on a cross-country chase to reclaim her. Tension builds as the audience sees Martin circle in on his unsuspecting prey. The denouement involves a cat-and-mouse chase through Laura's new home, as Martin rearranges Laura's towels and her spice cabinet to foreshadow his domineering presence. The conflict resolves after Laura strikes her husband in the groin, calls the police, and delivers the fatal gunshots. Dramatic Berlioz transitions to an upbeat, major-key background score, as the camera pulls away from Laura tenderly embracing her new next-door-neighbor paramour.

This second half of *Sleeping with the Enemy* exemplifies the unrealistic suspension of disbelief characteristic of New Hollywood domestic violence films. In attempts to craft an edge-of-your-seat box office success, filmmakers sacrificed realism for Hollywood sensationalism.<sup>118</sup> The result—numerous nonsensical jump

---

118. DIANE L. SHOOS, *Sleeping with the Enemy, Victim Empowerment, and the Thrill of Horror*, in *DOMESTIC VIOLENCE IN HOLLYWOOD FILM: GASLIGHTING*, *supra* note 71, at 63, 68 [hereinafter *Sleeping with the Enemy*] ("[E]roticizing and sensationalizing violence is one of the ways that the media attempts to depict survivors' stories of violence in order to attract more viewers.").

scares, plot twists, and a “homicidal beast” of a husband.<sup>119</sup> What the film gains in thrills, it loses any realistic portrayal of a domestic violence survivor breaking free from the power and control of her abuser.

For example, Laura quite effortlessly secures comfortable, affordable housing, acquires a new job, and begins a new, seemingly healthy relationship just weeks after she fled a years-long marriage marked by high-level abuse. Though every survivor recovers differently, “two of the most significant problems with the domestic violence survivor client population are mental health issues, often caused or exacerbated by the trauma and more recent trauma-related triggers, and substance abuse, which may also be cause [sic] or heightened by a traumatic situation.”<sup>120</sup> Laura exhibits no sign of trauma and no difficulty striking up meaningful, stable relationships. Thus, in an attempt to adhere to a mainstream “happy ending,”<sup>121</sup> the film fails to depict any of the painful aftereffects of domestic violence.

Part of this unrealistic portrayal is explained by Laura’s privileged position in society, which is statistically unusual for domestic violence victims generally.<sup>122</sup> For example, Laura—a beautiful, wealthy, white woman—breaks free from the cycle of violence seemingly with ease, packing up and starting a fulfilling life in small-town U.S.A. Although domestic violence does not discriminate based on race, class, gender, or sexual orientation, it is worth noting that Laura exemplifies the statistical outlier. Domestic violence disproportionately impacts younger women, particularly younger Black women.<sup>123</sup> Domestic violence also disproportionately affects families facing economic hardship.<sup>124</sup> Laura’s wealth, race, and privilege may explain her ability to overcome the countless obstacles to leaving that domestic violence victims face.<sup>125</sup>

---

119. Janet Maslin, *Review/Film; Sure, She’s Pretty. Pretty Scared, Too.*, N.Y. TIMES, Feb. 8, 1991, at C10, [https://www.nytimes.com/1991/02/08/movies/review-film-sure-s-pretty-pretty-scared-too.html](https://www.nytimes.com/1991/02/08/movies/review-film-sure-she-s-pretty-pretty-scared-too.html) [<https://perma.cc/7D7T-U6CM>].

120. Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 381 (2016).

121. See generally James MacDowell, *Introduction: The ‘Happy Ending’: The Making of a Reputation*, in HAPPY ENDINGS IN HOLLYWOOD CINEMA: CLICHÉ, CONVENTION AND THE FINAL COUPLE 1 (Edinburgh Univ. Press 2014) (2013).

122. Deborah M. Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL’Y 221 (2013) [hereinafter *Law, Social Movements*]. See *Mapping the Margins*, *supra* note 97, at 1274 n.109 (citing Ronald J. Ostrow, *Typical Rape Victim Called Poor, Young*, L.A. TIMES, Mar. 25, 1985, at 8, <https://www.latimes.com/archives/la-xpm-1985-03-25-mn-21342-story.html> [<https://perma.cc/7KRQ-G23Z>]).

123. For example, a Bureau of Justice study reported that Black women are significantly more likely to be raped than White women. Women in the sixteen to twenty-four age group are two to three times more likely to be raped or be victims of attempted rape than women in any other age group. *Id.*

124. *Law, Social Movements*, *supra* note 122, at 235.

125. For just fifty of such examples, see Sarah M. Buel, *Fifty Obstacles to Leaving*, a.k.a., *Why Abuse Victims Stay*, COLO. LAW., Oct. 1999, at 19 [hereinafter *Fifty Obstacles to Leaving*].

In this way, Laura and her New Hollywood counterparts represent both a “real-life” fact *and* a “reel-life” fiction.<sup>126</sup> In fact, the intersectional realities of domestic violence have long been excluded from the broader conversation about domestic violence.<sup>127</sup> This exclusion in part explains the popularly held “reel-life” misunderstanding that domestic violence is classless and raceless, and that it affects all victims in the same way.<sup>128</sup> This domestic violence fiction, with the help of films like *Sleeping with the Enemy* and *Enough*, reinforces the false social stereotype that domestic violence stems from stupidity, masochism, or codependence.<sup>129</sup> Viewers draw the conclusion that if leaving was so easy for Laura, it should be just as easy for all victims of domestic violence. Thus, New Hollywood films frame domestic violence as the *victim’s* problem—focusing exclusively on the victim’s individual fight for survival, rather than the abuser’s or society’s preventative role.<sup>130</sup> This leads the general public—and, thus, lawyers and judges—to focus “obsessively on the question ‘Why didn’t she leave?’”<sup>131</sup>

This highlights a distinction between domestic violence law as written and domestic violence law as applied. When and whether a domestic violence survivor leaves her abuser is legally irrelevant under criminal and civil statutes alike.<sup>132</sup> But practically speaking, this question, while legally irrelevant, often drastically affects survivors’ legal outcomes.<sup>133</sup> The obstacles to leaving (often framed as “the reasons

126. It is worth noting that Jennifer Lopez’s prominent role of the protagonist, Slim, in the film *ENOUGH* (Winkler Films 2002) defies this analysis, if only superficially. Although Jennifer Lopez is a prominent Puerto Rican-American actress, the film treats Slim’s Latinx identity with “ambivalence.” DIANE L. SHOOS, *Enough, the Action Heroine, and the Limits of Violence, in DOMESTIC VIOLENCE IN HOLLYWOOD FILM: GASLIGHTING*, *supra* note 71, at 131, 143 [hereinafter *Enough, the Action Heroine*].

127. *Mapping the Margins*, *supra* note 97, at 1243–44.

128. *Id.* at 1257–58 (“That battering occurs in families of all races and all classes seems to be an ever-present theme of anti-abuse campaigns . . . . A few commentators have even transformed the message that battering is not *exclusively* a problem of the poor or minority communities into a claim that it *equally* affects all races and classes.” (footnotes omitted)).

129. *Fifty Obstacles to Leaving*, *supra* note 125, at 19.

130. *See generally* NANCY BERNS, *FRAMING THE VICTIM: DOMESTIC VIOLENCE, MEDIA, AND SOCIAL PROBLEMS* 55 (Routledge 2017) (2004).

131. Epstein & Goodman, *supra* note 93.

132. *See, e.g.*, CAL. FAM. CODE § 6300(a) (West 2021) (civil statute permitting a CPO on the basis of “reasonable proof of a past act or acts of abuse. The court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order”). No temporal element is required. *See, e.g.*, CAL. FAM. CODE § 6301(c) (West 2021) (“The length of time since the most recent act of abuse is not, by itself, determinative.”). In fact, a victim can—and often *does*—seek a CPO while still living with their abuser, garnering a move-out order to aid in the process. *See, e.g.*, Nicole G. v. Braithwaite, 49 Cal. App. 5th 990 (2020) (affirming the issuance of CPO granting girlfriend temporary exclusive use and possession of shared residence).

133. Epstein & Goodman, *supra* note 93, at 414 (In their professional experiences, judges are unlikely to “make such . . . statements on the record, but many continue to perceive a woman’s decision to stay as externally inconsistent. Judges tend to express their belief in the connection between women staying and story plausibility in less formal contexts, such as judicial training sessions and casual conversations outside of the courtroom. And this failure of understanding affects case outcomes” (footnotes omitted)).

victims stay”<sup>134</sup>) factor into legal determinations made by judges and judicial officers.<sup>135</sup> Civil protection orders are often denied because judges “assum[e] a woman survivor’s story is less plausible when it fails to meet her judicial audience’s expectations about how the world works.”<sup>136</sup> Because New Hollywood films suggest that leaving can be as straightforward as moving across the country or taking a crash course in martial arts, it is no wonder that judges and lawyers—reinforced by their own privileged position in society—expect domestic violence survivors to do the same.<sup>137</sup> Ultimately, these representations “throw[] the burden of responsibility for the woman’s safety back on her shoulders.”<sup>138</sup>

During the 1960s, the burgeoning feminist movement put a spotlight on so-called “women’s issues” like domestic violence, and popular films about the topic soon followed.<sup>139</sup> Unlike previous portrayals of domestic violence, New Hollywood films focused almost exclusively on physical violence, portraying survivors as action heroes that fend off their abuser. However, films from the period continued to exclude intersectional voices, reinforcing the assumption that safety and security is as easy as having the legal tools available for when a survivor decides to leave.

#### *D. New Themes and Similar Challenges in the “Indiewood” Era (2000s–Present)*

From the 2000s to the present, filmmaking trends have profoundly impacted modern filmic portrayals of domestic violence. First, digital technology and streaming services expanded the market—and thus, the impact—of television and independent film vis-à-vis big-budget feature film.<sup>140</sup> Second, filmmakers no

134. *Fifty Obstacles to Leaving*, *supra* note 125, at 19.

135. *Id.*

136. *Id.*; *see, e.g.*, *Catchpole v. Brannon*, 36 Cal. App. 4th 237, 254 (1995) (During a rape and sexual harassment trial against a woman’s supervisor, the judge questioned the plaintiff as to why she stayed as the night went on and business was never discussed, asking: “But couldn’t you have easily said, ‘No, not tonight. I’m tired. I have got to go to school tomorrow. I’ll talk about it later.’ Why not? Why didn’t you say that?”), *disapproved on irrelevant grounds by* *People v. Freeman*, 222 P.3d 177 (Cal. 2010); Jane C. Murphy, *Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform*, 21 HOFSTRA L. REV. 1243, 1275 (1993) (During Maryland’s Special Committee on Gender Bias in the Courts, one superior court judge denied a civil protective order, stating, “I don’t believe anything that you’re saying . . . The reason I don’t believe it is because I don’t believe that anything like this could happen to me. If I was you and someone had threatened me with a gun, there is no way that I would continue to stay with them. There is no way that I could take that kind of abuse from them. Therefore, since I would not let that happen to me, I can’t believe that it happened to you.”).

137. Stephen Holden, *O.K., Buster, Now It’s Your Turn*, N.Y. TIMES, May 24, 2002, at E18 <https://www.nytimes.com/2002/05/24/movies/film-review-ok-buster-now-it-s-your-turn.html> [<https://perma.cc/NVU8-DGWX>] (reviewing ENOUGH (Winkler Films 2002)).

138. Enough, *the Action Heroine*, *supra* note 126, at 131.

139. *See Law, Social Movements*, *supra* note 122.

140. *See* YANNIS TZIOUMAKIS, AMERICAN INDEPENDENT CINEMA 257, 259 (2d ed. 2017); Anthony D’Alessandro, *Does the Success of Streaming Signal the Death of Indie Cinema?—Sundance*, DEADLINE (Jan. 24, 2019, 2:37 PM), <https://deadline.com/2019/01/netflix-versus-independent->

longer require institutional Hollywood resources to produce a film, and this "democratization" of filmmaking has expanded the perspectives and stories reaching audiences.<sup>141</sup> Finally, the rise of the independent film generated a focus on realism rather than fantasy as a result.<sup>142</sup> Each of these dynamics has impacted the domestic violence stories portrayed in film and television.

Revisionist perspectives dominate Indiewood storytelling, as independent voices revisit classic Hollywood stereotypes from fresh perspectives. Audiences are surprised to watch survivors take up vigilante justice, or traditional antagonists transform into sympathetic characters.<sup>143</sup> Admittedly, institutional Hollywood's big-budget smash hits continue to highlight stories about wealthy, white survivors along traditional gender norms; these well-funded stories dwarf historically marginalized narratives, produced independently on a shoestring budget.<sup>144</sup> However, for the first time, viewers have been introduced to films that highlight the race- and class-based challenges facing domestic violence survivors.

*Precious* (2009) exemplifies the Indiewood filmmaker's commitment to portraying a marginalized narrative with harsh, unflinching honesty. *Precious*, based on the novel *Push* by Sapphire, does not pull any punches, compounding domestic violence with incest, poverty, and race. Unlike New Hollywood domestic violence representations, which pit a survivor against her abuser, Indiewood films pit a survivor against a system. Throughout the film, Claireece "Precious" Jones does not fight back against the parents that sexually, physically, and emotionally abuse

---

cinema-roma-oscar-sundance-film-festival-1202541064/ [https://perma.cc/QY84-WA82] ("In sum, streaming hasn't killed the indie cinema star, it's only expanded the independent cinema marketplace. There are those in indie circles who praise Netflix: They are making and releasing movies that otherwise would not have gotten made by a mainstream distributor.")

141. See Emily Hales, *Hollywood is Falling, and Independent Film Hopes to Take Its Place*, DAILY UNIVERSE (May 3, 2015), <https://universe.byu.edu/narratives/hollywood-independent-film/> [https://perma.cc/8JB2-ZJZD].

142. Sherry B. Ortner, *Against Hollywood: American Independent Film as a Critical Cultural Movement*, 2 HAU: J. ETHNOGRAPHIC THEORY, no. 2, 2012, at 1, 11–12 ("Independent films seek to tell the truth about contemporary society. Where Hollywood films seek to provide escape and fantasy, independent films seek to tell realist or hyper(bolic)-realist stories about the world as it really is, in all its ugliness and cruelty, or all its weirdness and strangeness, and if this makes audiences uncomfortable, so be it.")

143. Examples include, *I, TONYA* (LuckyChap Entertainment 2017) (depicting a feminist revisionist biopic of once-infamous ice skater Tonya Harding), *A VIGILANTE* (MoviePass Films 2018) (starring Olivia Wilde as a domestic abuse survivor who avenges other survivors through vigilante justice), and the Netflix television show *You* (Alloy Entertainment 2018) (depicting the domestic violence abuser—rather than the survivor—as the television series' protagonist).

144. See Will Ashton, *Why Big Little Lies Costs Just as Much as Game of Thrones per Episode*, CINEMA BLEND (Sept. 2, 2019, 5:31 AM), <https://www.cinemablend.com/television/2478941/why-big-little-lies-costs-just-as-much-as-game-of-thrones-per-episode> [https://perma.cc/7ZZD-7LQE] (reporting that production for HBO's hit series *Big Little Lies* cost roughly \$14.5 million per episode); *Precious*, BOXOFFICEMOJO BY IMDBPRO, <https://www.boxofficemojo.com/release/rl2875950593/> [https://perma.cc/R29C-PN7B] (last visited Apr. 2, 2022) (reporting that production for the independent film *Precious* cost roughly \$10 million).

her—rather, she determinedly “battles” systemic racism, poverty, illiteracy, and the public school system that abandons her.

In *Precious*, the audience witnesses its titular protagonist, a sixteen-year-old Black woman from Harlem, overcome an unceasing barrage of obstacles, from two incestuous rape-induced pregnancies to an HIV diagnosis. The film broke important ground for the portrayal of domestic violence in film because—exactly twenty years after Kimberlé Crenshaw first coined the term “intersectionality” in domestic violence literature—*Precious* afforded audiences the first unflinching portrait of the intersectional systems of oppression operating in abusive relationships.<sup>145</sup> Admittedly, the film has been criticized as “offensive or injurious” because it purportedly “reproduces racial stereotypes of black pathology.”<sup>146</sup> On the one hand, “[v]iewers of *Precious* must take seriously the anxiety and distrust of African American critics and scholars, who argue that these depictions will only reinforce deeply embedded racist ideas about black family life, especially among white viewers.”<sup>147</sup> On the other hand, ignoring intersectional domestic violence altogether may bear equally grave consequences.<sup>148</sup>

To the extent that the film explores the convergence of abuse, poverty, and race, it introduces audiences to “real-life” domestic violence as rooted in systemic political, racial, and economic issues of subordination and coercive control.<sup>149</sup> Audiences see that *Precious*, unlike Laura and her New Hollywood counterparts, lacks resources critical to a domestic violence survivor’s long-term outcomes,

145. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

146. Mia Mask, *The Precarious Politics of Precious: A Close Reading of Cinematic Text*, BLACK CAMERA: AN INT’L FILM J., Winter 2012, at 96, 97.

147. Michelle Jarman, *Cultural Consumption and Rejection of Precious Jones: Pushing Disability into the Discussion of Sapphire’s “Push” and Lee Daniels’s “Precious,”* FEMINIST FORMATIONS, Summer 2012, at 163, 167.

148. See *Mapping the Margins*, *supra* note 97, at 1256–57 (In *The Color Purple*, Crenshaw reflects on problematic stereotypes and explains that “it is true that representations of Black violence—whether statistical or fictional—are often written into a larger script that consistently portrays Black and other minority communities as pathologically violent. The problem, however, is not so much the portrayal of violence itself as it is the absence of other narratives and images portraying a fuller range of Black experience. Suppression of some of these issues in the name of antiracism imposes real costs. Where information about violence in minority communities is not available, domestic violence is unlikely to be addressed as a serious issue”).

149. *Id.* at 1245–46 (explaining that “the physical assault that leads women to [domestic violence] shelters is merely the most immediate manifestation of the subordination they experience” at the intersection of subordinating “systems of race, gender, and class domination”); see also Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 588, 595 (1990) (promoting “nuance theory” rather than monolithic “essentialism” (the attribution of a fixed, universal feminine essence to women) in feminist movements, which “seems to black women to be peculiar to women who are white, straight, and socioeconomically privileged”).

namely, community support networks,<sup>150</sup> education and literacy,<sup>151</sup> or economic opportunities.<sup>152</sup> Thus, audiences witness intersectional domestic violence that operates differently from the abuse experienced by similarly-situated white, middle- and upper-class victims.<sup>153</sup> Unfortunately, marginalized voices are continually excluded from institutional Hollywood writers’ rooms, so *Precious* is the first and *only* notable film portraying a poor, Black domestic violence survivor.

Intersectional stories like *Precious* depict the primacy of the restorative approach to marginalized domestic violence survivors, particularly in its portrayal of social work and alternative education. Throughout the film, the oppressive “long-standing abuse [Precious] has endured” intertwines with illiteracy and “the appalling indifference . . . demonstrated by teachers and other adults throughout her life.”<sup>154</sup> Precious’s path toward freedom from violence begins with admission into an alternative school, rather than with arrest or prosecution. Her teacher Ms. Rain characterizes education holistically, as “understanding the forces of oppression operating in one’s life.”<sup>155</sup> Ms. Rain ultimately offers Precious much more than education—she welcomes Precious into her home, frantically calls local shelters, and secures Precious a halfway house where she can raise her children while securing her GED. Thus, Ms. Rain embodies the impact of extralegal support networks and institutional resources on a survivor’s path to safety and security.

In stark contrast, *Push* (the novel *Precious* is based on) describes Precious’s interactions with the police. After giving birth to her first child, Precious confesses to a nurse that her father and her child’s father are one and the same. The nurse

150. See RENATE KLEIN, RESPONDING TO INTIMATE VIOLENCE AGAINST WOMEN: THE ROLE OF INFORMAL NETWORKS 12–13 (2012) (“Because informal third parties often are closer (physically, emotionally, or culturally) to victim and perpetrator than formal services, their actions are a significant aspect of intervention and prevention.”); Jessica R. Goodkind, Tameka L. Gillum, Deborah I. Bybee & Cris M. Sullivan, *The Impact of Family and Friends’ Reactions on the Well-Being of Women with Abusive Partners*, 9 VIOLENCE AGAINST WOMEN 347, 368 (2003) (reporting in a longitudinal study of 137 women that friends and family “offering women a place to stay and refraining from negative reactions” had the most significant impacts on survivors’ well-being).

151. *Fifty Obstacles to Leaving*, *supra* note 125, at 22 (“Illiterate victims may be forced to rely on the literate batterer for everyday survival. A victim often finds that the batterer has forged her signature or forced her to sign for an array of consumer debts. Without the ability to read job applications, notices regarding rights, and other important correspondence, illiterate victims are more likely to remain unaware of resources.”).

152. See *Law, Social Movements*, *supra* note 122, at 223–24 (contending that structural economic forces contribute to domestic violence); Deborah M. Weissman, *The Personal is Political—and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 389 (contending that global economic conditions contribute to violence against women); see, e.g., Hara Estroff Marano, *Why They Stay: A Saga of Spouse Abuse*, PSYCH. TODAY, May 1, 1996, at 56, 59 (reporting the number one reason cited for returning to the abuser being lack of financial resources, and citing a comprehensive Texas study in which seventy-five percent of victims calling hotlines, emergency rooms, and shelters left their abusers at least five times previously).

153. *Mapping the Margins*, *supra* note 97, at 1246.

154. Jarman, *supra* note 147, at 172.

155. *Id.* at 175; PRECIOUS (Lee Daniels Entertainment, Smokewood Entertainment, Harpo Films & 34th Street Films 2009).

presumably notifies law enforcement, and the police arrive—but because Precious remains silent, nothing more is done on her behalf. Precious’s failure to cooperate with the police is hardly uncharacteristic. Black women’s hesitant engagement with law enforcement has been well-documented in qualitative and quantitative domestic violence studies.<sup>156</sup>

Precious’s response to the police depicts a common tension between Black and Brown survivors and retributive anti-domestic violence policies. First, women of color are less likely to call the police to begin with,<sup>157</sup> in part because arrests do not necessarily guarantee their future safety,<sup>158</sup> and because their claims are less likely to be investigated or believed.<sup>159</sup> Second, increased policing does not afford marginalized populations the “resources to establish secure lives with their children at home, at the workplace, or in their communities.”<sup>160</sup> Thus, retributive, tough-on-crime policies “internalize and perpetuate racial characterizations of victims and criminals” without supporting or protecting the survivors most likely to be abused.<sup>161</sup> Although *Precious* depicts one Black domestic violence survivor’s experience, her triumph introduces viewers to the restorative solutions that address the intersectional needs of many Black women at large.

*Precious* demonstrates that the most crucial remedies to survivors of color are often restorative and extralegal, targeting root causes of domestic violence rather than the crime itself.<sup>162</sup> Policing and criminalizing domestic violence, while facially worthy endeavors, do not support Precious’s path to freedom from violence. Ultimately, alternative education and social services—not policing or prosecution—support Precious and survivors like her as they break free from the cycle of domestic violence. Unfortunately, Hollywood’s systematic whitewashing has impacted popular understandings of domestic violence and, consequently, the

---

156. See, e.g., Tyrone C. Cheng & Celia C. Lo, *Physical Intimate Partner Violence: Factors Related to Women’s Contact with Police*, 50 J. COMPAR. FAM. STUD. 229, 231–32 (2019) (finding a positive correlation between reporting domestic violence to police and increased education, higher economic status, and increased age—and a significant negative correlation between reporting domestic violence to the police and minority ethnicity); Hanna, *supra* note 25, at 1880–81; *Mapping the Margins*, *supra* note 97.

157. *Mapping the Margins*, *supra* note 97.

158. Janell D. Schmidt & Lawrence W. Sherman, *Does Arrest Deter Domestic Violence?*, 36 AM. BEHAV. SCIENTIST 601, 602 (1993) (arguing that arrests have, at best, a short-lived deterrent effect).

159. *Mapping the Margins*, *supra* note 97, at 1281.

160. Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between “The Truly National and the Truly Local,”* 42 B.C. L. REV. 1081, 1133 (2001).

161. Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 798 (2007).

162. *Mapping the Margins*, *supra* note 97, at 1250 (“Women of color are differently situated in the economic, social, and political worlds. When reform efforts undertaken on behalf of women neglect this fact, women of color are less likely to have their needs met than women who are racially privileged. For example, counselors who provide rape crisis services to women of color report that a significant proportion of the resources allocated to them must be spent handling problems other than rape itself. Meeting these needs often places these counselors at odds with their funding agencies, which allocate funds according to standards of need that are largely white and middle-class.”).

legal rights and remedies afforded survivors. By excluding intersectional “real-life” narratives from predominately whitewashed “reel-life” stories, “advocates, lawyers, and judges” receive and perpetuate an “exclusionary narrative that prioritizes resources” for certain types of domestic violence victims.<sup>163</sup> To date, the bulk of state funding and mainstream political support has supported retributive policies, rather than restorative ones.<sup>164</sup> Grassroots organizations, in turn, are responsible for exploring alternative, community-based conceptions of accountability “that challenge the carceral status quo.”<sup>165</sup>

The Irish film *Herself* (2020) reinforces themes that *Precious* introduced eleven years prior, namely, the challenges survivors face at the intersection of domestic violence and poverty, and survivors’ common criticisms of the retributive justice system. The film is a modern-day parable depicting a young mother’s attempt to build a house for herself and her daughters after leaving a marriage fraught with high-level physical violence.<sup>166</sup> *Herself* drops the audience into the part of the cycle of violence where New Hollywood films typically end, during the final (and most dangerous)<sup>167</sup> abusive episode that drives Sandra to leave her husband. The plot structure redirects audiences’ attentions from the abusive relationship itself to the grueling path to freedom, which often takes place afterward.<sup>168</sup> Thus, Sandra never physically fights her husband Gary on-screen—rather, she battles broken systems as she seeks safety for herself and her daughters.

The central conflict in *Herself* pits Sandra against the ineffective local housing authority. Throughout the film, Sandra juggles meetings with her social worker, school pickups and drop-offs, two minimum-wage jobs, divorce proceedings, and visitation schedules while struggling to secure long-term housing for herself and her daughters. Unfortunately, the housing authority demonstrates the same indifference

163. Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1163 (2009).

164. See Courtney Cross, *Reentering Survivors: Invisible at the Intersection of the Criminal Legal System and the Domestic Violence Movement*, 31 BERKELEY J. GENDER L. & JUST. 60, 101–02 (2016).

165. Kim, *supra* note 109, at 26.

166. Ann Hornaday, *An Abused Woman Finds ‘Herself’ in This Cinematic Parable of Empowerment*, WASH. POST (Jan. 6, 2021, 3:26 PM), [https://www.washingtonpost.com/goingoutguide/movies/herself-movie-review/2021/01/06/b88f56fa-4d40-11eb-a9d9-1e3ec4a928b9\\_story.html](https://www.washingtonpost.com/goingoutguide/movies/herself-movie-review/2021/01/06/b88f56fa-4d40-11eb-a9d9-1e3ec4a928b9_story.html) [<https://perma.cc/86EM-39H5>].

167. The most fatal period for many survivors is the period during or immediately after separation. See Marian Duggan, *“Idealising” Domestic Violence Victims*, in REVISITING THE “IDEAL VICTIM”: DEVELOPMENTS IN CRITICAL VICTIMOLOGY 159, 159 (Marian Duggan ed., 2018) (citing WORLD HEALTH ORG., WORLD REPORT ON VIOLENCE AND HEALTH (Etienne G. Krug, James A. Mercy, Linda L. Dahlberg, Antony B. Zwi & Rafael Lozano eds., 2002) (“Decades of feminist research has indicated . . . [that] for many women, leaving a violent partner increases their vulnerability and may result in the perpetrator’s violence towards them becoming fatal.”)).

168. Contrary to Lenore Walker’s theories on “learned helplessness” and the three-stage cycle of violence, domestic violence is perhaps better understood as occurring in a long-term “cyclical sequence, rather than a linear fashion, and survivors will typically revisit earlier stages as they move toward ‘maintenance.’ Essentially, ending violence is a process.” See Stoever, *supra* note 65, at 309.

as the public school system in *Precious*, as Sandra and her daughters wait for “salvation that never comes.”<sup>169</sup> So, Sandra decides to construct a house of her own, literally and metaphorically building a safe and secure future for herself and her daughters. Sandra enlists colleagues and acquaintances in her project, because (unsurprisingly) building a home is no easy task—especially while raising two daughters and coping with post-traumatic stress disorder and substance abuse (common side-effects of domestic violence).<sup>170</sup> Sandra’s support network, brought together in an unlikely series of fortuitous events, supports her journey toward freedom from violence.

The fact that Sandra achieved survival with the help of a fortuitous, ragtag community network is as inspiring as it is troubling. The idea that help can come from anywhere—from another mother on the playground or an elderly neighbor, for example—is inspiring. However, the thought that Sandra’s survival resulted from pure, tenuous happenstance is equally unsettling. Some reviewers critique this plotline as far-fetched fable.<sup>171</sup> In fact, this storyline underscores the statistical improbability of survival, even after “real-life” survivors flee their abusers.<sup>172</sup> Often the path to survival is a long and difficult process.<sup>173</sup> From the outset, survivors face a complex web of social and economic dimensions preventing them

169. Ella Kemp, ‘Herself’ Review: *Clare Dunne Shines in an Urgent Drama About Domestic Violence*, NME (Oct. 17, 2020), <https://www.nme.com/reviews/film-reviews/herself-review-2789755> [<https://perma.cc/ME9D-Y277>].

170. *Violence Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> [<https://perma.cc/A4AG-VZ5G>] (last updated Nov. 2, 2021) (reporting depression, PTSD, smoking, and binge drinking as symptoms of intimate partner violence); Stephanie J. Woods, Rosalie J. Hall, Jacquelyn C. Campbell & Danielle M. Angott, *Physical Health and Posttraumatic Stress Disorder Symptoms in Women Experiencing Intimate Partner Violence*, 53 J. MIDWIFERY & WOMEN’S HEALTH 538, 538–39 (2008) (reporting a significant association between symptoms of post-traumatic stress disorder and intimate partner violence [defined as “physical, emotional, and sexual abuse, threats of violence, and risk of homicide”] in women); Kristina A. Hedtke, Kenneth J. Ruggiero, Monica M. Fitzgerald, Heidi M. Zinzow, Benjamin E. Saunders, Heidi S. Resnick & Dean G. Kilpatrick, *A Longitudinal Investigation of Interpersonal Violence in Relation to Mental Health and Substance Use*, 76 J. CONSULTING & CLINICAL PSYCH. 633, 633 (2008) (reporting that domestic violence exposure was strongly associated with increased risk of PTSD, depression, and substance use problems in a two-year longitudinal study).

171. Jake Coyle & Associated Press, *Heartfelt Without Being Sentimental, ‘Herself’ Traces an Irish Mom’s Path Out of Abuse*, CHI. SUN TIMES (Jan. 8, 2021, 5:30 AM), <https://chicago.suntimes.com/2021/1/8/22219829/herself-review-amazon-prime-video-clare-dunne-movie-phyllida-lloyd> [<https://perma.cc/6AQF-7LU3>] (“A warm spirit of neighborly goodwill grows as everyone pitches in, which [one character] attributes to the old Irish term of ‘*meitheal*.’ That may sound like a feel-good, made-for-the-movies tale, and ‘*Herself*’ does indeed conjure an air of fable.”).

172. Barbara J. Hart, *National Estimates and Facts About Domestic Violence*, NCADV VOICE, Winter 1989, at 12 (estimating that a domestic violence survivor is seventy-five percent more likely to be murdered when she tries to flee or has fled than when she stays).

173. See generally Vicki A. Moss, Carol Rogers Pitula, Jacquelyn C. Campbell & Lois Halstead, *The Experience of Terminating an Abusive Relationship from an Anglo and African American Perspective: A Qualitative Descriptive Study*, 18 ISSUES MENTAL HEALTH NURSING 433 (1997).

from leaving abusive relationships.<sup>174</sup> Even after survivors seek shelter, common side-effects of domestic violence (substance abuse or criminal histories related to self-defense, for example) often bar survivors from crucial domestic violence resources.<sup>175</sup> Thus, policies designed to protect victims prevent them from accessing resources crucial to long-term safety.

The film also depicts “real-life” domestic violence advocates’ longstanding critiques of the retributive legal system. For example, during a contentious custody hearing,<sup>176</sup> Sandra cries out, exasperated, “You still bring me in here, and you put me through this, sit me in the same room with him, ask me questions like ‘Why didn’t you leave him?’”<sup>177</sup> She pauses for a steadying breath, before declaring, “But you never ask, ‘Why didn’t he stop?’”<sup>178</sup> In the filmic narrative, Sandra is simply testifying before a family court judge; but in the cultural function that a film represents, Sandra is testifying to the legal community as well. Although legislative standards and remedies differ slightly in statewide criminal and civil domestic violence statutes, the legal process is historically adversarial rather than restorative.<sup>179</sup> Unfortunately, every foundation of this adversarial legal system threatens survivors with re-traumatization and psychological harm.<sup>180</sup> Sandra’s “reel-life” experience forces audiences, advocates, and judges to recognize the inherent pitfalls in this adversarial system. Her story also invites legislators to

174. JEFFREY FAGAN, NAT’L INST. OF JUST., *THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS* 3, 28–29 (1996) (describing the unique dimensions of domestic violence that prevent retributive control, such as the “strong emotional ties between victims and assailants” and economic interdependence between the parties).

175. See Patty Neal Dorian, *So Who’s Left?*, OFF OUR BACKS: WOMEN’S NEWSJOURNAL, Oct. 2001, at 24, 24 (explaining, from practical professional experience working in domestic violence shelters, that “the list of ‘we don’t shelter those women’ just keeps growing: women with substance abuse issues, homeless women, women with mental illnesses, women who are HIV-positive, women who won’t attend parenting classes, women with physical disabilities, women who don’t want protective orders, [and] women who won’t submit to drug tests and searches”).

176. Unfortunately for Sandra and “real-life” domestic violence survivors like her, attempts to shield children under the protection of CPO’s often backfires. “[R]esearch shows that batterers are more likely to fight for custody, and when they fight, they are more likely to receive custody . . . Battered mothers must also contend with ‘friendly parent’ provisions when they bring custody cases[,]” which “require courts to consider which parent will be more likely to foster continuing, meaningful contact between the children and the other parent.” When survivors (understandably) are reluctant to “foster continuing contact (based on [their] experiences with the batterer as spouse and parent),” this “unfriendly” behavior undermines their chances of securing custody and protection for their children. Goodmark, *supra* note 23, at 28–29.

177. *HERSELF* (Element Pictures, BBC Films, Merman Films, British Film Institute & Screen Ireland 2020).

178. *Id.*

179. See FERRARO, *supra* note 34.

180. See Epstein & Goodman, *supra* note 93, at 424 (“The more a police officer or judge appears to doubt a survivor’s credibility, the more likely she is to feel upset, destabilized, or even (re)traumatized.”); see also Melanie Randall, *Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert: Why Feminists Should Critically Engage with Restorative Approaches to Law*, 36 DALHOUSIE L.J. 461, 469 (2013).

consider restorative, trauma-informed policies more likely to effectuate survivors' long-term safety and security.

Ultimately, *Herself* and *Precious* demonstrate the power that film represents: the ability to transport viewers from their physical reality, to force audiences to question expectations, shape attitudes, and to envision a legal system different and better than what is known and familiar. The rise of independent film has introduced new voices into modern popular cultural understanding. These previously marginalized perspectives and realistic stories promote a restorative—rather than retributive—trauma-informed legal system to effectuate safety and security for domestic violence survivors.

#### CONCLUSION—A CALL TO ACTION

Hollywood has dramatized or romanticized domestic violence in each American filmmaking period, from Classical Hollywood and Gothic Romance, to New Hollywood and the Indiewood era. Each filmmaking period reflects and informs popular cultural conceptions of domestic abuse. Because domestic violence occurs primarily behind closed doors,<sup>181</sup> commercial films are the primary source of public understanding about the issue.<sup>182</sup> As such, these cultural conceptions reflect and inform the legal rights and remedies afforded survivors. Thus, writers, directors, and producers wield immense responsibility in their artistic representation of “real-life” facts within “reel-life” narratives.

Despite the relative promise “Indiewood” films have demonstrated in efforts to depict “real-life” survivors in “reel-life” domestic violence stories, the mainstream media still primarily excludes marginalized populations from popular narratives. For example, audiences have not watched a mainstream movie depicting male or LGBT domestic violence survivors' experiences to date. This reflects and reinforces the myth that domestic violence is perpetrated exclusively by heterosexual men against heterosexual women,<sup>183</sup> even as studies show that abuse in LGBT relationships takes place at the same rate<sup>184</sup> (or at even higher rates)<sup>185</sup> as

181. Conner, *supra* note 95, at 183; Aiken & Murphy, *supra* note 83.

182. DIANE L. SHOOS, *Introduction: Representing Domestic Violence, Regalvanizing the Revolution*, in DOMESTIC VIOLENCE IN HOLLYWOOD FILM: GASLIGHTING, *supra* note 71, at 1, 14.

183. See XAVIER L. GUADALUPE-DIAZ, TRANSGRESSED: INTIMATE PARTNER VIOLENCE IN TRANSGENDER LIVES 9–10 (2019) (describing the prevailing view held by family violence scholars that “violence [is] a heterosexually cisgender phenomenon” within a “larger patriarchal power structure that constructed women as property in marriage, along with a legal system that supported or tolerated this view”).

184. Shannon Little, Note, *Challenging Changing Legal Definitions of Family in Same-Sex Domestic Violence*, 19 HASTINGS WOMEN'S L.J. 259, 260–61 (2008).

185. ADAM M. MESSINGER, LGBTQ INTIMATE PARTNER VIOLENCE: LESSONS FOR POLICY, PRACTICE, AND RESEARCH 5 (2017); Alexander Camacho, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., TOP HEALTH ISSUES FOR LGBT POPULATIONS INFORMATION & RESOURCE KIT C-3 (2012), <https://www.lgbtagingcenter.org/resources/pdfs/TopHealthIssuesforLGBTPopulationsKit.pdf> [<https://perma.cc/J5G8-VXTA>].

it does in same-sex relationships. These heteronormative domestic violence narratives reflect and inform criminal domestic violence statutes and CPOs, which have traditionally excluded LGBT survivors from their legal protections.<sup>186</sup> For every experience that Hollywood has whitewashed from its domestic violence narratives, there is a community particularly underserved by the existing retributive, anti-domestic violence legal framework. For instance, immigrant,<sup>187</sup> poor,<sup>188</sup> homeless,<sup>189</sup> and previously incarcerated<sup>190</sup> survivors victimized by domestic violence are particularly underserved by current domestic violence law. This lack of legal protection is influenced and reflected by the lack of representation on the silver screen.

Further, since the Classical Hollywood period, feature films have framed domestic violence as isolated acts of physical or sexual violence, as opposed to a broader relationship defined by coercion and control. Although these narratives have increasingly adopted feminist and post-feminist themes, they persistently undermine survivors’ outcomes.<sup>191</sup> First, the focus on physical violence rather than coercion and control has stalled legislation that addresses broader conceptions of domestic violence, except for recently enacted CPO statutes in Hawaii and California.<sup>192</sup> Second, these one-dimensional “reel-life” portrayals permit “real-life” abusers to justify ongoing emotional abuse by distinguishing themselves from more dramatic, made-for-the-movies representations of physical or sexual violence.<sup>193</sup> Third, films focusing on physical or sexual violence do not alert family, friends, and support networks to the more subtle symptoms of emotional, financial, or

---

186. See GABRIELLE D. SHIRLEY, NETWORK FOR PUB. HEALTH L., DOMESTIC VIOLENCE PROTECTIONS ISSUE BRIEF: STATUS OF PROTECTIONS IN THE U.S. FOR VICTIMS OF DOMESTIC VIOLENCE IN SAME-SEX RELATIONSHIPS (2019), <https://www.networkforphl.org/wp-content/uploads/2019/12/Issue-Brief-Status-of-Protections-in-the-U.S.-for-Victims-of-Domestic-Violence-in-Same-Sex-Relationships.pdf> [<https://perma.cc/5745-D3DZ>] (regarding the legal status of protections—or lack thereof—afforded lesbian, bisexual, or transgender survivors in the United States); see also Phillip Sylvester, Note, *Arming America’s Most Dangerous Abusers: How Domestic Violence Laws Have Failed the LGBTQIA Community*, 11 DREXEL L. REV. 783, 808–819 (2019) (summarizing the legal domestic violence resources limited to same-sex survivors).

187. See Sarah M. Wood, Note, *VAWA’s Unfinished Business: The Immigrant Women Who Fall Through the Cracks*, 11 DUKE J. GENDER L. & POL’Y 141 (2004) (regarding legal rights and remedies—or the lack thereof—afforded women who are immigrants).

188. See WOMEN’S INST. FOR LEADERSHIP DEV. FOR HUM. RTS., THE TREATMENT OF WOMEN OF COLOR UNDER U.S. LAW (2001), <http://www.wildforhumanrights.org/pdfs/treatmentwomen.pdf> [<http://web.archive.org/web/20051030072118/http://www.wildforhumanrights.org/pdfs/treatmentwomen.pdf>] (regarding legal rights and remedies—or the lack thereof—afforded women of color experiencing poverty).

189. See Anne R. Roschelle, *Our Lives Matter: The Racialized Violence of Poverty Among Homeless Mothers of Color*, 32 SOCIO. F. 998 (2017) (regarding legal rights and remedies—or the lack thereof—afforded women of color experiencing homelessness).

190. See Cross, *supra* note 164, at 118–19.

191. *Sleeping with the Enemy*, *supra* note 117, at 64–65.

192. CAL. FAM. CODE § 6320(c) (West 2021); HAW. REV. STAT. § 431:10-217.5 (2021).

193. DIANE L. SHOOS, *Conclusion: Safe Haven and Ideological Gaslighting*, in DOMESTIC VIOLENCE IN HOLLYWOOD FILM: GASLIGHTING, *supra* note 71, at 160.

reproductive abuse. These perceptions of domestic abuse as an isolated, violent incident—rather than an ongoing relationship characterized by coercion and control—underpin retributive statutes that fail to account for “the reality of [survivors’] lives” and lived experiences.<sup>194</sup>

Finally, Hollywood rarely depicts the legal, financial, or emotional repercussions that survivors face after leaving their abuser or defending themselves. For example, films like *Sleeping with the Enemy* or *Enough* rarely include a postscript where Laura Burney or Slim are convicted of murder or manslaughter for defending themselves.<sup>195</sup> Except for *Herself*, audiences have not seen the economic consequences for a survivor whose abuser financially supports her.<sup>196</sup> Audiences have never witnessed the immigration consequences for a survivor who must choose between remaining in the United States or staying with her abuser.<sup>197</sup> Notably, each of these unintended consequences could be mitigated or eliminated by a community-centered, restorative approach.<sup>198</sup>

At present, neither Hollywood nor the legal community have fully upheld their responsibility to effectuate safer outcomes for survivors. Though Indiewood has come close, many survivors’ faces and experiences are unfamiliar to mainstream audiences. These limited perspectives have promoted limited retributive solutions when restorative justice holds so much untapped potential for survivors’ safety and security. My hope is that, with this Note and others like it, Hollywood will pave the way—and the law will follow.

---

194. See C. Quince Hopkins, Mary P. Koss & Karen J. Bachar, *Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities*, 23 ST. LOUIS U. PUB. L. REV. 289, 292 (2004).

195. See generally Alafair S. Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, out of the Battered Woman*, 81 N.C. L. REV. 211 (2002).

196. Hanna, *supra* note 25, at 1881 (recounting the reasons women who lack financial resources are particularly vulnerable to domestic violence).

197. *Mapping the Margins*, *supra* note 97, at 1246–47 (recounting the reasons immigrant women of color are particularly vulnerable to domestic violence).

198. See Goodmark, *supra* note 24, at 71; Hopkins, Koss & Bachar, *supra* note 194, at 290–91.