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## Domestic Violence against Women with Disabilities: A Feminist Legal Theory Analysis

Doug Jones

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# DOMESTIC VIOLENCE AGAINST WOMEN WITH DISABILITIES: A FEMINIST LEGAL THEORY ANALYSIS

*Doug Jones\**

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## I. INTRODUCTION

Domestic violence against women with disabilities is disturbingly prevalent.<sup>1</sup> A national survey of domestic violence service programs reveals that “ten percent of the women served by the programs had physical disabilities, seven percent had mental retardation or developmental disabilities (‘MR/DD’), twenty-one percent had mental illness, two percent had visual impairments and three percent had hearing impairments.”<sup>2</sup> These figures may underestimate the true incidence of domestic violence against women with disabilities because the figures represent only those women who have sought domestic violence services; they do not include unreported incidents or those women who did not seek services.<sup>3</sup>

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1. See Center for Research on Woman with Disabilities, *Violence Against Women with Disabilities – Access to Domestic Violence Programs*, <http://www.bcm.edu/crowd/?pmid=1344> (last visited Feb. 9, 2007).

2. *Id.*

3. *Cf. id.* The statistics in this report were gathered from programs that deliver services to women with disabilities who suffer domestic violence; accordingly, the statistics only represent those women who sought domestic violence services.

Some commentators argue that a more accurate estimation of the incidence of domestic violence against women with disabilities is that “regardless of age, race, ethnicity, sexual orientation or class, women with disabilities are assaulted, raped and abused” more than twice as often than women without disabilities.<sup>4</sup> According to this projection, half of all women with disabilities will experience domestic violence.<sup>5</sup> Despite the prevalence of domestic violence against women with disabilities, many researchers and commentators agree that the conventional means of a woman’s escape from domestic violence, protective orders and domestic violence shelters, have not evolved to meet the needs of women with disabilities.<sup>6</sup> For example, many shelters are not accessible to women with physical disabilities and standard protective orders often do not meet the needs of a woman with disabilities who has come to rely upon her abuser for care and assistance.<sup>7</sup>

The Americans with Disabilities Act (‘ADA’) defines a disability as “(a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment.”<sup>8</sup> This broad definition is too imprecise to be useful in a careful discussion of disability because it lumps very different disabilities into the same category. A more workable definition for disability would create three sub-classifications: physical disability, developmental disability, and psychological disability. Physical disabilities affect the appearance or function of a person’s body and include paralysis and sensory impairments.<sup>9</sup> Developmental disabilities affect a person’s cognition or development and generally fall into five categories: autism, cerebral palsy, epilepsy, neurological impairments, and mental retardation.<sup>10</sup> Finally, a psychological disability is a persistent psychological or psy-

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4. Barbara Faye Waxman Fiduccia & Leslie R. Wolfe, Center for Women Policy Studies, *Violence against Disabled Women* 1 (1999), <http://www.centerwomenpolicy.org/pdfs/vaw5.pdf> (last visited Feb. 9, 2007) [hereinafter *Fiduccia & Wolfe I*].

5. Patricia Tjaden & Nancy Thoennes, Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey, U.S. Dept. Just., Nat’l Inst. Just. Ctr. For Disease Control & Prevention 28, Nov. 2000, <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf> (estimating that approximately 25 percent of women without disabilities experience domestic violence).

6. See, e.g., Mary Ann Curry & Laurie E. Powers, Abuse of Women with Disabilities: An Issue Brief, <http://www.cavnet2.org/details.cfm?DocID=2870> (last visited Feb. 21, 2007).

7. *Id.*

8. Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 (2)(a-c) (2000).

9. See Christine T. Lowery, *Social Work with Families*, in FOUNDATIONS OF SOCIAL WORK PRACTICE, 189 (Mark A. Mattaini, Christine T. Lowery & Carol H Meyer eds., 2002).

10. See *id.*

chiatric disorder or emotional or mental illness, such as depression or schizophrenia.<sup>11</sup>

A useful place to begin an analysis of domestic violence against women with disabilities is with examples of such violence. What follows are three fictional cases of women with disabilities who suffered domestic violence.<sup>12</sup> Each case involves a woman with a different type of disability - physical, developmental, and psychological. These cases illustrate several issues that are unique to cases of domestic violence against women with disabilities.

Edna K. has a physical disability: she has late-stage AIDS. Due to AIDS related complications, she uses a motorized wheelchair for mobility. She has a boyfriend who hits her and who abuses her in ways that take advantage of her disability. One time after a fight, her boyfriend took the battery pack out of her wheelchair, rendering her immobile. Despite Edna's pleas for the return of the battery, her boyfriend left her immobile for several hours.

Months later, after a separate incident of abuse, Edna's boyfriend was arrested for harassment and for menacing her. While her boyfriend was in jail, and before his court date arrived, Edna went to the District Attorney's office and expressed her wish to drop the charges against her boyfriend. Edna was told that she could not drop the charges since the State, not Edna, was prosecuting her boyfriend. Even though Edna was not able to drop the charges, she officially informed the District Attorney of her intent not to cooperate. Since she was the only witness in this case, this effectively halted the prosecution.

When Edna gave notice of her intent not to cooperate, she told the Assistant District Attorney her reasons for not wanting to proceed with the prosecution. Because both Edna and her boyfriend have AIDS, they rely on each other for assistance with day-to-day care. When Edna is sick, her boyfriend takes her to the doctor, and vice versa. Edna expressed that she needed her boyfriend and her boyfriend needed her; she did not want jail to separate them.

Edna's case demonstrates how women with physical disabilities are vulnerable to forms of abuse to which non-disabled women are not vulnerable. Because she uses a wheelchair, her boyfriend was able to abuse her by controlling her mobility. Furthermore, Edna's case illus-

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11. *See id.*

12. *See, e.g.,* Kimberly Black Wisseman, "You're My Pretty Bird in a Cage": Disability, Domestic Violence, and Survival, <http://ici.umn.edu/products/impact/133/over1.html> (last visited May 26, 2007). This account is not the factual basis for the above case examples, rather, it is cited to show that the above, fictional case examples are based in reality.

trates (or demonstrates) the unique issues that arise when a disabled woman's abuser is also her primary caregiver.

The next example involves Marge S., who has a developmental disability – mild mental retardation. Marge met her boyfriend eight years ago. He was working as the driver of an ambulette, which Marge relies on for transportation. During their relationship, Marge's boyfriend would pressure her to engage in sexual acts in which she did not want to perform. He never physically forced her to do anything. Instead, he persuaded her into these sexual acts, and threatened to leave her if she did not do what he wanted. Whereas these tactics would not be successful on most non-disabled women, they were successful on Marge because of her mental retardation. Essentially, Marge's boyfriend took advantage of her cognitive impairment to make her do sexual things she did not want to do, without going so far as to rape her outright.<sup>13</sup> Afterwards, Marge told her boyfriend that she did not want to "do things like that anymore." Her boyfriend was dismissive of this desire, pointing out that no one "forced" her to do anything. He then called her a slut.

Marge's boyfriend was involved with other women during his relationship with Marge. When Marge confronted him about this, he claimed that he was entitled to be with other women because she had been with another man during their threesome. Finally, fed up with the way she was treated, Marge broke up with her boyfriend. He did not take this well. He began harassing her, calling and text massaging her cell phone ten to fifteen times a day. Many of the messages said "I love you," "let's start over," or "I want to get married." Later, Marge's boyfriend was arrested for harassment. When she discussed her case with an Assistant District Attorney, she explained that she stayed with her boyfriend for eight years because he is aware of her disability and believes it is difficult for people with disabilities to find intimate partners.

Marge's case shows how women with developmental disabilities are vulnerable to forms of abuse that prey on their developmental disabilities. Her case also reveals the difficulties women with disabilities face in finding and sustaining intimate relationships. These difficulties may cause some women with disabilities to choose an abusive intimate relationship over no intimate relationship at all.

The last case involves Selma B., who has a psychological disorder – borderline personality disorder. Borderline personality disorder

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13. Some feminist scholars would classify this as rape. See Susan Estrich, *Rape*, 95 YALE L.J. 1087, 1161 (1986). However, a discussion of whether this conduct is or should be considered rape is beyond the scope of this paper.

is a serious mental illness characterized by pervasive instability in moods, interpersonal relationships, self-image, and behavior.<sup>14</sup> This instability often disrupts family and work life, long-term planning, and the individual's sense of self-identity.<sup>15</sup>

Selma's ex-husband was physically and verbally abusive. Selma was involved in several criminal and family court cases regarding this abuse. Selma often expressed frustration with the court system, complaining that it does not resolve problems and moves too slowly. However, she also failed to follow through with her cases, often becoming uncooperative or missing appointments with attorneys or counselors. Attorneys assigned to work with Selma describe her as erratic and difficult to work with, and attribute this difficulty to her psychological disability.

Selma's case is an example of how the infrastructure that provides services to victims of domestic violence is frequently unable to effectively meet the needs of women with disabilities. Her case shows how this is especially true when a woman's disability effects her personal interactions or communication.

The incidence of domestic violence against women with disabilities is high. Edna, Marge, and Selma are but three of the millions of women with disabilities who have suffered domestic violence.<sup>16</sup> However, despite this high incidence, little feminist legal scholarship has addressed the issue. The aim of this paper is to use the lens of feminist legal theory to examine this issue in depth. The domestic violence service infrastructure, which assists victims/survivors of domestic violence with escaping that violence, inadequately meets the needs of women with disabilities who suffer domestic violence.<sup>17</sup> This infrastructure includes, but is not limited to, law enforcement, prosecution officers, the court system, and non-profit organizations that provide shelters and other services. Feminist legal theory provides insight as

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14. See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 56 (4th ed., text rev. 2000).

15. *Id.*

16. See Tjaden, *supra* note 5, at 26, Nov. 2000, <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf> (last visited Sept. 9, 2007) (finding that approximately 25 million women experience intimate partner violence in their lifetime). Accord U.S. Census Bureau, New York Quick Facts from the U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/36000.html> (last visited July 29, 2007) (finding that approximately 16 percent, or approximately 50 million out of 300 million US citizens have disabilities; accordingly approximately 4 million, 16 percent of 25 million, women with disabilities have experienced domestic violence in their lifetime).

17. This infrastructure includes, but is not limited to, law enforcement, prosecution offices, the court system and non-profit organizations that provide shelters and other services.

to why this is the case and how the problem can be most effectively remedied.

Part II gives a brief background of domestic violence scholarship and advocacy, and explains how scholars have overlooked women with disabilities who suffer domestic violence. Part III examines myths and misconceptions about women with disabilities, and argues that these misconceptions cause women with disabilities to experience domestic violence differently from women without disabilities. Finally, and most importantly, Part IV proposes ways in which disabled women's access to the domestic violence service infrastructure can be improved, and uses feminist legal theory to analyze these proposals.

## II. DOMESTIC VIOLENCE LEGAL SCHOLARSHIP HAS OVERLOOKED WOMEN WITH DISABILITIES

One of the great successes of the women's movement is the attention and reform it brought to the problem of domestic violence.<sup>18</sup> At common law, beating one's wife was condoned under the right of chastisement.<sup>19</sup> It was not until the later 19th century that this right was formally repudiated in the United States.<sup>20</sup> However, even after chastisement was repudiated, case law developed doctrines such as marital privacy and inter-spousal tort immunity, which shielded domestic violence from public intervention.<sup>21</sup> Today, due to the large part and efforts of feminist legal theorist and activists, all fifty states have some form of civil domestic violence code.<sup>22</sup>

While advocates for victims of domestic violence have made significant progress, the problem of domestic violence is far from solved. In 1998, approximately one million violent crimes were committed against intimate partners and 85% of these crimes were against women.<sup>23</sup> Some reports conclude that battering by husbands, ex-husbands, or boyfriends is the "single largest cause of injury to women

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18. See Wikipedia, Feminist Movement, [http://en.wikipedia.org/wiki/Feminist\\_movement](http://en.wikipedia.org/wiki/Feminist_movement) (last visited Sept 9, 2007) (providing a brief and cursory history of the women's movement).

19. See MARY BECKER, CYNTHIA GRANT BOWMAN & MORRISON TORREY, *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 383 (2d ed. 2001).

20. *Id.*

21. See Reva B. Siegel, "The Rule of Love": Wife Beating as Prerogative and Privacy, 105 *YALE L.J.* 2117, 2150-70 (1996).

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

23. U.S. Dep't of Justice, Bureau of Justice Statistics, Special Report: Intimate Partner Violence 1 (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf> (last visited Sept. 9, 2007).

in the United States".<sup>24</sup> Moreover, some commentators estimate that as many as 50% of all married women will be beaten at least once by their husbands.<sup>25</sup>

In an effort to address the domestic violence problem in a tailored fashion, many feminist commentators focus on specific sub-groups of women who experience domestic violence.<sup>26</sup> To name but a few, commentators have focused on domestic violence in the Black, Latina, Asian American, Gay/Lesbian/Bisexual/Transgender, and Native American communities.<sup>27</sup> Commentators who focus on these sub-groups of women realize that women who belong to these sub-groups often experience domestic violence differently from other women *because* of their sub-group membership. Thus, commentators who take this approach adopt a theoretical stance of both sameness and difference. Women who belong to a sub-group are different from women who do not belong to that sub-group. Simultaneously, women who belong to a sub-group are similar to other women who also belong to the sub-group – at least to the extent that women of the sub-group share commonalities in the causes of and solutions to their domestic violence.<sup>28</sup> This paper also adopts this theoretical stance of similarities and differences.

By bringing the specific and unique ways the various sub-groups of women experience domestic violence to the surface, commentators hope to explain the specific reasons why domestic violence is prevalent in the various sub-groups and to tailor solutions that will be

24. BECKER ET AL., *supra* note 19, at 383.

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

26. Of course, one could argue that the real impetus of such specific focus is not an effort to precisely address the problem of domestic violence, but rather is a result of the idea that one can only write about what one personally knows. Thus, the argument goes, African-American scholars focus on domestic violence in the black community because a black scholar personally knows about being black. While this drive to write about what one personally knows about may be one way to explain why scholars have focused on sub-groups of women who suffers domestic violence, it cannot be the only reason. Indeed, if it were the only reason, then there would be no way to account for this article, which was written by an author without disabilities.

27. See, e.g., Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 237-39 (1994); Karin Wang, *Battered Asian American Women: Community Responses from the Battered Women's Movement and the Asian American Community*, 3 ASIAN L.J. 151, 162-67 (1996); James W. Zion & Elsie B. Zion, *Hozho' Sokee' – Stay Together Nicely: Domestic Violence Under Navajo Common Law*, 25 ARIZ. ST. L.J. 407, 412-15 (1993); Raquel J. Gabriel, *Intimate Partner Violence in the GLBT Communities: A Selected Annotated Bibliography*, 43, CAL. W. L. REV. 417 (2007).

28. Of course, this view is ripe for anti-essentialist critique. For a further discussion of this, see *infra* Part IV.



especially potent for women belonging to the various sub-groups. In-disputably, this body of domestic violence sub-group scholarship has served a valuable purpose, but, in some areas and on some topics, it is inadequate. Scholars pay little attention to the impact of domestic violence on a large and especially vulnerable sub-group of women, women with disabilities.<sup>29</sup>

Considering the feminist legal method of “asking the woman question” – i.e., “identifying and challenging those elements of existing legal doctrine that leave out or disadvantage women and members of other excluded groups” – it is quite surprising that legal theorists have paid so little attention to domestic violence against women with disabilities.<sup>30</sup> Perhaps this lack of attention is because there seem to be few disabled legal scholars, whether feminist and not.<sup>31</sup> Perhaps it is because even those who are politically correct to the point of absurdity still harbor a lurking bias against people with disabilities or are at least willfully ignorant to their plights. Perhaps it is a symptom of society’s chronic tendency to sweep “icky” people with disabilities under the rug. Regardless of the cause, the important point is that the problem of domestic violence against women with disabilities must be exposed, placed front and center, and addressed.

It is worth noting that while feminist legal theorists in large part have overlooked the issue of domestic violence against women with disabilities, there is a rather significant body of non-legal feminist disability theory that deals with domestic violence. This non-legal scholarship generally takes the view that disability, like gender, is a socially constructed concept.<sup>32</sup> Accordingly, feminist disability theorists argue that high rates of violence against women with disabilities are not a by-product of “disability as a vulnerability,” but rather is a

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29. A Westlaw search by the author on February 9, 2007 using the search terms “domestic violence” /s women /s disable!” revealed only two law review or journal articles which, in whole or in significant part, dealt with the issue of domestic violence and women with disabilities. In contrast, a search of the same database with the terms “domestic violence” /s women /s (black “African American”) retrieved a great many more articles, which in whole or significant part dealt with the issue of domestic violence and black women.

30. See Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 831 (1990).

31. The author is aware of no formal studies on the incidence of disability among legal scholars. Accordingly, authority for the above proposition lies in the author’s perceptions of and experiences with legal scholars.

32. See, e.g., Barbara Waxman Fiduccia & Leslie R. Wolfe, Center for Women Policy Studies, *Women & Girls with Disabilities: Defining the Issues* 25 (1999), <http://www.centerwomenpolicy.org/programs/waxmanfiduccia/documents/DIS1.pdf> (last visited Sept. 9, 2007) [hereinafter *Fiduccia & Wolfe II*].

consequence of segregation, poverty, and the inherent physical, economic and social dependence created by disabilities.<sup>33</sup> Non-legal feminist disability theorists primarily focus on the myths and misconceptions about women with disabilities and the different ways those women with disabilities experience domestic violence as a means to draw conclusions about the broader issue of domestic violence against women with disabilities.<sup>34</sup>

### III. UNIQUE MYTHS, UNIQUE EXPERIENCES, AND UNIQUE BARRIERS

Myths and misconceptions about disabled women abound. These myths are one of the reasons why disabled women experience domestic violence differently. Such myths include the following: women with disabilities are not abused because it is simply too low and cowardly to assault someone who cannot fight back; women with disabilities are asexual and do not form intimate relationships, and therefore cannot be victims of domestic violence; even if women with disabilities experience *some* domestic violence, the perpetrators deserve a little leeway because it is unreasonable to expect a man in such a difficult situation not to vent his frustrations once in a while; women with disabilities are child-like, and not to be believed.<sup>35</sup>

Many forms of domestic violence touch the lives of even non-disabled women. Physical abuse is the most visible manifestation, but domestic violence also includes name-calling, isolating a woman from friends and family, forcing a woman to engage in unwanted or disliked sexual acts, and/or threatening to kill or harm pets.<sup>36</sup> However, women with disabilities experience unique forms of domestic violence that prey on their disabilities. Non-disabled women experience many forms of domestic violence. Physical abuse is the most visible manifestation, but domestic violence also includes name-calling, isolating a woman from friends and family, forcing a woman to engage in unwanted or disliked sexual acts, and/or threatening to kill or harm pets.<sup>37</sup>

Accordingly, a disabled woman's experience of domestic violence can be completely different from a non-disabled woman's experience of

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33. *Id.* at 25.

34. *See, e.g., id.* Although the authors do not explicitly state this, they implicitly engage in such examination and draw conclusions about the broader issue.

35. Karen Nutter, Note, *Domestic Violence in the Lives of Women with Disabilities: No (Accessible) Shelter from the Storm*, 13 S. CAL. REV. L. & WOMEN'S STUD. 329 (2004).

36. *Id.* at 332.

37. *Id.*

domestic violence. A batterer may take away or disable a wheelchair, place a communication device out of reach, place a dangerous object in the path of a blind woman, withhold medication or over-medicate, or refuse basic care such as bathing, dressing, or using the toilet.<sup>38</sup>

Many barriers keep women without disabilities from escaping domestic violence. For instance, in addition to fearing that escape will instigate further violence, "emotional pressures" may keep a woman in an abusive relationship.<sup>39</sup> "Constant insults and criticisms from her batterer may make her feel helpless and unable to act independently . . . ." <sup>40</sup> Further, a woman "may believe that abuse is a normal, though not ideal, part of relationships, especially if she saw her mother battered by a spouse or boyfriend when she was a child."<sup>41</sup> A religious woman's moral beliefs may preclude her from divorcing a battering spouse.<sup>42</sup> "Th[ese] belief[s] may be encouraged by friends, family, and/or religious counselors, who urge her to save her marriage."<sup>43</sup> Worse, if a batterer has isolated a woman from her friends and family, she may feel alone and that there is no one to help her escape.<sup>44</sup>

Another reason women with disabilities have unique experiences with domestic violence is that they face barriers to escape from domestic violence that women without disabilities do not face. In the first place, a woman with disabilities, especially if she has a developmental disability, may not even realize she is experiencing abuse.<sup>45</sup> More so than non-disabled women, women with disabilities may accept abuse as a normal part of their life.<sup>46</sup>

Even if a woman with disabilities recognizes her abuse and has a subjective desire to escape, she may feel that there is little she can do to escape. Woman with mobility or visual impairments may not physically be able to escape, and women who cannot drive may depend on transportation services that require advance notice for a pickup.<sup>47</sup> Further, a woman with disabilities who grew up in protected environments, where her independence was limited or non-existent, may feel

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38. *Id.* at 338.

39. *Id.* at 333.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 332.

45. It's My Right Coalition, Abuse of People with Disabilities, <http://www.cavnet2.org/details.cfm?DocID=2868> (last visited Feb. 21, 2007).

46. *Id.*

47. MARLENE F. STRONG, ET AL., CAREGIVER ABUSE AND DOMESTIC VIOLENCE IN THE LIVES OF WOMEN WITH DISABILITIES 8 (Berkley Planning Associates 1997).

incapable of making decisions on her own or may feel that submission to authority figures – i.e. people without disabilities - is a necessary part of life, or even a virtue.<sup>48</sup> Some argue that this submissive and passive attitude, which results from the protected environment that women with disabilities inhabit, make women with disabilities particularly attractive to men who seek vulnerable women to control.<sup>49</sup>

Barriers facing women with disabilities are also socially constructed. General social prejudice against people with disabilities, including the notion that they are asexual, may make these women feel that they should appreciate any kind of intimate attention, no matter how abusive.<sup>50</sup> If a woman with disabilities suffers under this myth, she will be less likely to seek escape from domestic violence. Further, a woman may believe her batterer when he tells her that without his care she would find herself in an institution because no other man would want her.<sup>51</sup>

It may seem that it would be easy for women with disabilities to obtain help escaping from domestic violence because they are seen as vulnerable and they may have more contact with state authorities because of their disabilities.<sup>52</sup> However, this is not the case. Instead, the misconception that women with disabilities are childlike or asexual is so pervasive that people seem to reject the very idea of a woman with a disability in a relationship.<sup>53</sup> If she cannot be in a relationship, then the faulty reasoning is that she cannot be a victim of domestic violence. This misconception is a barrier and leads to the fact that women with disabilities are less likely to be believed or taken seriously when they report incidents of abuse.<sup>54</sup>

Yet another barrier faced by women with disabilities is that their batterers are often their primary caretakers.<sup>55</sup> Even if a woman wishes to escape, she may not think that shelters will be able to accom-

48. *Id.* at 18-19.

49. Cheryl Guidry Tyiska, Working with Victims of Crime with Disabilities 4, US Dept. Just. (Sep. 1998), <http://www.ojp.usdoj.gov/ovc/publications/factshts/disable.htm> (last visited Sept. 9, 2007).

50. STRONG, ET AL., *supra* note 47, at 16-17.

51. *Id.*

52. See generally Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1432 (1991) (noting that “[b]ecause poor women are generally under greater government supervision – through their associations with public hospitals, welfare agencies and probation officers – their drug use is more likely to be detected and noticed.”).

53. Nutter, *supra* note 36, at 329.

54. *Fiduccia & Wolfe II*, *supra* note 32, at 27.

55. STRONG, ET AL., *supra* note 47, at 5.

modate her needs or she may not have a backup caregiver to call.<sup>56</sup> A woman with disabilities may face the difficult and unenviable choice of staying with an abusive caregiver or escaping to the very distinct possibility of institutionalization.

Finally, financial considerations work as barriers to escape. Employment discrimination and the restraints of disability may make it difficult for a woman to work, leaving her financially dependant on her caregiver/batterer.<sup>57</sup> The caregiver/batterer may also be dependant on the disabled woman's disability checks, thus making him particularly averse to her ending the relationship.<sup>58</sup>

#### IV. PROPOSALS AND THEORY

##### A. *Domestic Violence Service Infrastructure Reforms*

The barriers lined up to keep a woman with disabilities from escaping domestic violence can seem insurmountable. Reforms must be made to remove these barriers.<sup>59</sup> The most significant and most tangible barriers that women with disabilities face, when attempting to escape, are those that physically prevent her from escaping. These are the most tangible barriers because they can be seen, touched or observed, and therefore they are the most ripe for reform.

The classic method of securing escape from domestic violence is crisis intervention.<sup>60</sup> For women who are in abusive situations, crisis intervention includes escaping temporarily to a woman's shelter, escaping permanently from the abuser, and having an escape plan ready in the event of imminent violence if the woman must remain with the perpetrator.<sup>61</sup> These options may be problematic for women with disabilities if the shelter is inaccessible to women with physical disabilities, if there is no accessible transportation to the facility, if the shelter staff are unable or unwilling to communicate with deaf or speech-impaired women, if she depends primarily on the abuser for assistance with personal needs and has no family or friends to stay with, or if she is physically incapable of executing the tasks necessary to implement an

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56. Nutter, *supra* note 36, at 339.

57. *Id.*

58. *Id.*

59. *See* Nutter, *supra* note 36, at 339. (calling for such reform).

60. Center for Research on Woman with Disabilities, Violence Against Women with Disabilities - Access to Domestic Violence Programs, <http://www.bcm.edu/crowd/?pmid=1344> (last visited Feb. 9, 2007).

61. *Id.*

escape plan, such as packing necessities and driving or arranging transportation to a shelter.<sup>62</sup>

However, only one-third of all domestic violence programs offer safety plan information modified for use by women with disabilities or provide disability awareness training for program staff.<sup>63</sup> Disabled women's physical access to the domestic violence service infrastructure must increase.<sup>64</sup> All buildings must comply with the architectural requirements of the Americans with Disabilities Act, state laws, and local ordinances.<sup>65</sup> Program staff should receive training on basic disability facts, ways to communicate with women with disabilities, and the unique vulnerabilities and reduced escape options faced by women with disabilities.<sup>66</sup> In addition, women with disabilities should be hired as program staff and administrators.<sup>67</sup> That will enable service providers to be more effective and sensitive to disability issues as counselors.<sup>68</sup>

With regards to the question of what reforms must be made to the domestic violence service infrastructure, the critiques and comments that would come from an anti-essentialist feminist theorist must be taken seriously. In her groundbreaking article, *Race and Essentialism in Feminists Legal Theory*, Angela Harris argues that "a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation and other realities of experience" inexorably leads to the silencing of the voices of groups with less power in order to privilege the voices of groups with more power.<sup>69</sup>

One could argue that this trend towards essentialism occurs because it is cognitively convenient. It is easier to categorize the world and deal with those categories than it is to deal with everything one encounters on an individual and original basis that is free from prior judgments and conceptions. Imagine how much time and effort it would take to navigate a world in which everything one encountered was new. However, just because one's mind may be built to essential-

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62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

ize does not mean that one ought to essentialize when making policy decisions.

This trend towards essentialism can explain why the domestic violence service infrastructure has developed in a way that poorly serves the needs of women with disabilities. The essential woman is not disabled. Here, the result of essentialism is a domestic violence service infrastructure that best serves this essential, non-disabled woman. The voice of the minority – women with disabilities – was silenced to privilege the voice of the majority – non-disabled women.

Not only does essentialism offer an explanation of the origins of the problem, it also offers insights into what problems must be avoided in the future. If it is true that there is no essential woman, then it is even truer that there is no essential disabled woman. There is a galapagosian variety of disabilities.<sup>70</sup> Furthermore, disabilities are not exclusive; people can be and are afflicted by more than one at a time.<sup>71</sup> Lastly, disabilities are analog, not binary; they exist on a scale of varying degrees.<sup>72</sup> These factors combine exponentially to create an astronomical variety of people with disabilities, all with very different needs. One would fall into the essentialist trap by simply calling for more access for women with disabilities to the domestic violence service infrastructure. There is simply too much variety among women with disabilities to lump them all into one category.

This is not to say that one should simply throw up one's hands and give up; society should call for more access for women with disabilities to the domestic violence service infrastructure. However, in making that call, one must always be cognizant of the variety of disabilities and one must always remember that no single solution will ever meet the needs of all women with disabilities.<sup>73</sup>

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70. See, e.g., Center for Research on Woman with Disabilities, Violence Against Women with Disabilities – Access to Domestic Violence Programs, <http://www.bcm.edu/crowd/?pmid=1344> (last visited Feb. 9, 2007) (listing only some of the many types of disability).

71. See, e.g., *id.*

72. See, e.g., *id.*

73. The critical reader will notice that this paper frequently refers to disabled women as a group. One could argue that in so doing, this paper falls into the essentialist trap. To a certain extent, this is true. However, despite the variety of disability, one could argue that women with disabilities do share commonalities in the causes of and solutions to their domestic violence. To this extent, it is useful and theoretically correct to refer to women with disabilities as a group. The key is that in grouping people together like this, one remains aware of the dangers associated with such grouping – that minority voices can be silenced by the majority. As Harris would put it, we need to ensure that this group – this category – remains unstable. See Harris, *supra* note 69, at 586.

Critics of the anti-essentialist position may argue that the inexorable logical conclusion of the anti-essentialist position is the total abolishment of categories. Because categories are useful both in the law and in everyday life, critics argue that the position is flawed. Angela Harris's response to this is that categories need not be abolished, but rather they should be "explicitly tentative, relational and unstable."<sup>74</sup> Harris' response is applicable here. Categories of women with disabilities are useful to the extent that they are delineated by the commonalities among the causes of and the solutions to domestic violence against women with disabilities. However, even though useful, these categories should remain unstable to ensure that minority voices are not silenced. If this theoretical approach is adopted, the domestic violence service infrastructure will shift towards a more case-by-case approach, which is effective considering the varying needs of women with disabilities.

It is important to ask what changes must be made to the domestic violence service infrastructure. However, one could argue that it is a question perhaps best left to people who have the experience of actually working with disabled victims of domestic violence – social workers, counselors and other domestic violence service providers. The relevant question for lawyers is how to most effectively bring the changes about.

A liberal feminist like Ruth Bader Ginsberg would advocate for change to come through litigation and the courts, at least at first.<sup>75</sup> Justice Ginsberg's theory is that "the law's differential treatment of men and women . . . historically [has] tended to contribute to women's subordination."<sup>76</sup> In her view, the appropriate way to approach this problem is to "pursue a series of cases that might illuminate the most common instances of gender distinctions in the law and thereby provide a basis for evolution of . . . doctrine and attendant legislative changes."<sup>77</sup> This approach is readily applicable to the problem of domestic violence against women with disabilities because advocates could peruse cases, which illuminate ways that the domestic violence service infrastructure inadequately meets the needs of women with disabilities. Indeed, proceeding through the courts is a viable avenue here because, arguably, a claim under the Americans with Disabilities

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74. Harris, *supra* note 69, at 586.

75. See Hon. Ruth Bader Ginsberg & Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970's*, U. CHI. LEGAL F. 9 (1989).

76. *Id.*

77. *Id.*



Act arises any time a shelter or other piece of the domestic violence service infrastructure is not accessible.<sup>78</sup>

However, the important question is not whether a particular Americans with Disabilities action will be successful; instead, the important question is whether it is appropriate to sue in the first place, or whether it is more appropriate to move towards reform in some other way. Justice Ginsberg's view would be that the courts are a good place to start. Once the suit illuminates the way in which the law or the domestic violence service infrastructure disadvantages women with disabilities, then case law and legislative changes will evolve to neutralize these disadvantages.

Critics of this view, possibly more radical feminists, would disagree that a lawsuit is the correct place to start. A court issuing a ruling that gives some benefit to women with disabilities, would, in the opinion of these critics, be a position of weakness. One of the purposes of the judicial branch of the government is to protect the minority from the majority.<sup>79</sup> A court decision granting some benefit to women with disabilities would be doing just that, protecting the minority of women who have disabilities from a system that only caters to the majority, non-disabled women. These critics would argue that a rule coming from a court decision, i.e. coming from a protection of the minority, is a weak position. A stronger position would come not from a protection of the minority, but from legislation. Critics would argue that legislation is a stronger position because it is a manifestation of the will of the majority. Critics conclude that the proper starting point to achieve change is not the court system, but legislative advocacy to prompt the law making authority to adopt laws that give women with disabilities more access to the domestic violence service infrastructure.

These radical feminist critiques are theoretically correct insofar as legislative action is a stronger position than a court decision. However, increasing the access of women with disabilities to the domestic violence service infrastructure is not a zero sum game. Any court decision that increased access would not come at a cost to a legislative advocacy effort, and vice versa. In fact, both approaches working simultaneously would probably grant symbiotic benefits in that each approach would raise awareness from which the other could benefit. Also, consider the perspective of a woman with a disability who does not have adequate access to the domestic violence service infrastructure. She does not care whether her access comes from a position of

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78. See American With Disabilities Act of 1990, 42 U.S.C. § 12102 (2000).

79. See Judge Robert C. Leuba, *The Importance of Judicial Independence* (2000), <http://www.jud.ct.gov/external/news/press36.html> (last visited Sept. 9, 2007).

power or a position of weakness; she just wants to escape from her abuser. The quickest way to increase access to the domestic violence service infrastructure is to employ both approaches simultaneously.<sup>80</sup>

### B. Education and Non-Legal Advocacy

Increasing disabled women's access to the domestic violence service infrastructure involves tearing down physical barriers, like shelters that are inaccessible or fail to meet the needs of disabled women. However, there are also mental barriers that must be torn down.<sup>81</sup> These mental barriers exist both in the minds of women with disabilities who suffer domestic violence and in the minds of the members of the domestic violence service infrastructure who are tasked with helping these women escape.

Mental barriers in the minds of the members of the domestic violence service infrastructure include the commonly held myths and misconceptions about women with disabilities. Perhaps the most significant myth is that women with disabilities are asexual, both in the sense that a woman with a disability never has sexual feelings or urges and that no one could ever have sexual feelings or urges directed at a woman with a disability.<sup>82</sup> There are many effects of this myth. It causes women with disabilities who report their abuse to be believed less often than non-disabled women.<sup>83</sup> If one believes that a woman with a disability is incapable of forming an intimate relationship, then it follows that the woman cannot be a victim of domestic violence. In addition, it makes women with disabilities feel as if they should appreciate any sexual attention, even if it is abusive.<sup>84</sup> This myth must be eradicated.

Many domestic violence professionals consider outreach presentations in the community focusing on the needs of abused women with disabilities to be the most effective way to deal with these

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80. Of course, if one were presented with a situation where limited resources required a choice between either the litigation or the legislative advocacy approach, then one would have to consider a number of factors in making the decision. Factors should include the theoretical strength of the effort, its chances of success, how much it would cost, and the amount of attention it would raise.

81. See, e.g., Nutter, *supra* note 36, at 339 (discussing the myth of asexuality and its effect of domestic violence against women with disabilities).

82. See STRONG, ET AL., *supra* note 47, at 16-17.

83. *Fiduccia & Wolfe II*, *supra* note 32, at 27.

84. STRONG, ET AL., *supra* note 49, at 16-17.

myths.<sup>85</sup> However, only sixteen percent of domestic violence service programs offer such outreach.<sup>86</sup> Clearly, the frequency of these outreach programs must be increased. These programs should focus on the gatekeepers of the domestic violence service infrastructure, such as law enforcement and other community level organizations that are involved in the reporting of cases of domestic violence, so that when women with disabilities report their abuse to these gatekeepers, they will be taken more seriously and will be believed more often. Currently, only twelve percent of domestic violence outreach programs educate law enforcement personal about disability related abuse.<sup>87</sup> More programs need to focus on the gatekeepers of the infrastructure.

Women with disabilities may also have myths and misconceptions about themselves, which act as barriers to escape from domestic violence. This may be especially true for women with developmental disabilities. Women with disabilities may believe that abuse is a normal part of the life of a person with a disability.<sup>88</sup> They may also buy into the myth of their own asexuality. If these myths are accepted, a woman with disabilities is less likely to seek escape from abuse because she may think abuse is a normal part of life, or she may not want to leave her abuser for fear that she will never be able to find another intimate partner.

These myths must be confronted and stopped. Consciousness raising sessions present an opportunity to do just that. Catharine MacKinnon described consciousness raising as a technique that “explores the social world each woman inhabits through speaking of it, through comparison with other women’s experiences, and through women’s experiences of each other in the group itself.”<sup>89</sup> MacKinnon argues that the ultimate goal of these sessions was to transform the personal into the political.<sup>90</sup> Focusing on the “small situations . . . that made up the common life of women,” one of the primary topics these consciousness raising groups dealt with was sexuality.<sup>91</sup> MacKinnon

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85. Center for Research on Woman with Disabilities, Violence Against Women with Disabilities – Access to Domestic Violence Programs, <http://www.bcm.edu/crowd/?pmid=1344> (last visited Feb. 9, 2007).

86. *Id.*

87. *Id.*

88. Nutter, *supra* note 36, at 333.

89. Catharine MacKinnon, *Consciousness Raising*, in FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 92 (Mary Becker, Cynthia Grant Bowman, Morrison Torrey eds. 2001).

90. *Id.*

91. *Id.*

argues that the end result of these sessions was “the reference point for truth, and thereby the definition of reality.”<sup>92</sup>

With regard to the myths and misconceptions about women with disabilities, especially the myth of asexuality, the reference point for the truth must be moved. Women with disabilities are just as sexual as women without disabilities.<sup>93</sup> If women without disabilities discussing their everyday lives can turn personal experiences of power differentials between men and women into political manna with the potential to challenge those power differentials,<sup>94</sup> then women with disabilities discussing their sexual lives can turn their personal experiences with the myth of their asexuality into political manna with the potential to challenge the myth of asexuality. Of course, women with severe developmental disabilities may not be able to participate in these kinds of discussions. However, this does not weaken this approach’s potential to defeat the myth of asexuality. Disabled women without developmental disabilities would still be able to participate in these discussions, and women with mild development disabilities may be able to participate if the discussions are correctly moderated.

Once women with disabilities are no longer under the spell of the myth of their asexuality, they may be less reluctant to leave abusive caregivers for fear that they will never be able to find another intimate relationship. As sexual beings, women with disabilities have every right to intimate relationships and sexual attention, and once this has been internalized, abusive intimate relationships may no longer be viewed as tolerable, second best solutions. Once this mental barrier is eradicated, more domestic violence against women with disabilities will be reported, and more women with disabilities will gain access to the domestic violence service infrastructure.

In addition to the myth of asexuality, some women with disabilities may hold the misconception that abuse is a normal part of the life of a person with disabilities and that submission to authority, no matter how abusive, is a virtue.<sup>95</sup> If disabled women’s access to the domestic violence service infrastructure is to be increased, this mythical barrier can be neutralized. The concept of learned helplessness is relevant to achieving this goal.

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92. *Id.*

93. See, e.g., American Association on Intellectual and Developmental Disabilities, Fact Sheet: Sexuality and Disability, <http://www.aamr.org/Policies/sexuality.shtml> (last visited June 17, 2007).

94. MacKinnon, *supra* note 89, at 92.

95. See Nutter, *supra* note 36, at 339.

In her book, *The Battered Woman Syndrome*, Lenore Walker posits the concept of learned helplessness to explain why battered women remain with their abusers.<sup>96</sup> Learned helplessness originally stems from the field of behavioral psychology and was used to explain the results of a fascinating, but macabre, experiment. Dogs were placed in cages and subjected to random electric shocks.<sup>97</sup> At first, the dogs attempted to escape from the cages, but, after some time and after nothing the dogs did effected escape, the dogs became complacent, passive, and submissive – even as the shocks continued.<sup>98</sup> The dogs became so passive, that even when the door to the cage was left open, the dog failed to flee from the cage.<sup>99</sup> Even while the shocks continued, researchers had to physically remove the dogs from the cages.<sup>100</sup> The theory of learned helplessness supposedly explained the dogs' behavior.<sup>101</sup> Once they realized that they could do nothing to escape from the shocks, they learned that they were helpless.<sup>102</sup> This lesson was learned so well, that even when the door to the cage was left open, the dogs continued to suffer under the effects of learned helplessness.<sup>103</sup>

Walker argues that battered women also suffer from learned helplessness, and that even though many could escape their abuser, many do not.<sup>104</sup> For the dogs, the solution was for researches to guide the dogs out of the cage. Walker argues that the same must happen for battered women – outside forces must guide them out of the abusive situation.<sup>105</sup>

In the case of a woman with a disability, especially if it is a developmental disability, a way to defeat the misconception that abuse is a normal part of life is to provide this kind of outside guidance. The myth of the normalcy of abuse is pervasive and will not defeat itself. Women who suffer from this misconception must be shown that abuse is not normal or acceptable. One way to do this is a broad-based outreach program focusing on groups of women with disabilities that aims at destroying this myth. These programs could include sexual education that could teach people with disabilities that normal relationships are not abusive. In addition, these programs could set up a kind of

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96. Lenore Walker, *THE BATTERED WOMAN SYNDROME* 46 (1979).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

dating service for disabled people, which would make it easier for people with disabilities to find an intimate relationship that is not abusive. Once someone experiences a non-abusive relationship, it will be easier to internalize that abuse is not normal or acceptable. If this myth – which exists in the minds of women with disabilities and prevents them from seeking help – is effectively destroyed, then women with disabilities will gain more access to the domestic violence service infrastructure because more will seek help.

### C. Courtroom Accommodations

A crucial part of the domestic violence service infrastructure is the court system. However, the courts, as a cog in this infrastructure, fails to adequately meet the needs of women with disabilities insofar as accommodations made for battered women are often not applicable to battered women with disabilities.

Some courts have made accommodations for battered women. For example, the New Hampshire Supreme Court allowed expert witnesses to testify on the effects of battered women's syndrome, and how this syndrome makes battered women remain with their batterers despite the abuse.<sup>106</sup> However, while accommodations like this may meet the needs of battered women, they do not necessarily meet the needs of battered women with disabilities.

Theorists hold that battered women's syndrome is a type of post-traumatic stress disorder.<sup>107</sup> Thus, it is a syndrome that occurs following some kind of trauma. However, if a woman with disabilities suffers completely under the myths of her asexuality and the normalcy of her abuse, then, it is possible that the woman could experience her abuse as non-traumatic. Of course, for domestic violence to be experienced as non-traumatic it would have to be sufficiently, for lack of a better word, minor or normalized. Serious physical abuse that results in injury would certainly almost always be experienced as traumatic. However, more minor forms of abuse, such as the disabling of a wheelchair, withholding assistance with necessarily life activities, or "rough" transfers from a wheelchair to a bed may be experienced as part of everyday life, and therefore non-traumatic.<sup>108</sup> If there is no trauma, then there can be no post-traumatic battered woman's syndrome. In

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106. See *State v. Searles*, 141 N.H. 224 (1996) (allowing expert testimony concerning battered women's syndrome).

107. See Walker, *supra* note 96, at 46.

108. See, e.g., Nutter, *supra* note 36, at 333 (discussing women with disabilities who experience their abuse as normal).

that case, the use of an expert to testify on how the battered women's syndrome makes woman remain with her abuser would not meet the needs of a woman with disabilities. If a woman with disabilities experiences abuse as non-traumatic, then it could be argued that battered women's syndrome does not apply to her.

If battered women's syndrome is not applicable, then something else must fill the void in order to explain why the woman remained with her batterer for so long. This something else should be the pervasive myth of disabled women's asexuality and the myth that abuse is a normal part of the life of a person with a disability. Experts, possibly social workers or psychologists, should be able to testify about these myths and about how a woman with disabilities who suffers under these myths is less likely to seek escape from her batterer. A jury instruction to the above effect could also be effective.

This kind expert testimony or jury instruction could be used anytime there is a question in the mind of the fact finder as to why a woman with disabilities stayed with her abuser despite the abuse. A controversial application of this proposal would be as a defense to murder where a woman with disabilities kills her abuser. A more banal application of the proposal would be at a trial for the custody of children. At such a trial, the fact finder could wonder why the woman stayed with her abuser for so long. Further, the fact finder might assume that any woman who stays in an abusive relationship is not fit to be a mother. In this situation, expert testimony explaining why the woman remained in the relationship would combat this faulty assumption.

*D. Allowing Women with Disabilities to Drop Charges against their Caretakers/Batterers*

For Robin West, the classical definition of a human being – the definition that the law adopts – is that of an autonomous human being, which is separate and distinct from others.<sup>109</sup> West's theory is that women do not fit this definition because they are not autonomous but relational.<sup>110</sup> West argues that women are not separate from others but rather fundamentally linked and intertwined with others.<sup>111</sup> For

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109. See Robin L. West, *Fifteenth Anniversary Celebration: The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN'S L.J. 149, 151 (2000).

110. *Id.* at 210.

111. *Id.*

West, the root of this relationalism is pregnancy and motherhood.<sup>112</sup> Women are burdened by the task of birthing and rearing children, and, therefore, by necessity, women must rely on others for support.<sup>113</sup> They are necessarily intertwined with others, both those they care for and those they rely on so that they may effectively carry out that care.<sup>114</sup>

West's point is that many, if not most, laws are designed to best serve autonomous human beings, and therefore leave relational women out in the cold.<sup>115</sup> To remedy this, West argues, women should insist on an acceptance of their difference.<sup>116</sup> This approach of insisting on the acceptance of difference is readily applicable to women with disabilities.

To whatever extent women are relational and not autonomous, women with disabilities are more so than not. The very nature of a disability requires varying degrees of extra physical, economic, social or psychological dependence on and connection to others.<sup>117</sup> West argues that women without disabilities are relational because they need others to help them effectively care for children and themselves.<sup>118</sup> In this sense, their reliance on others is *indirect*; they rely on others not because they themselves need it, but because their children need it. Women with disabilities, on the other hand, *directly* rely on others; it is not only their children that need the help, but they themselves. Furthermore, a woman without disabilities can cease relying on others once her children are grown. A woman with disabilities who requires care will require that care for her entire life.

Understanding that women with disabilities are more relational than non-disabled women leads to yet another realization of how the domestic violence service infrastructure inadequately meets the needs of women with disabilities. The impetus for this realization lies in the fact that in many situations a woman's sole caregiver is also her batterer.<sup>119</sup>

If a woman is dependant on her caregiver/batterer as her only source of care, her choices are limited. Either she may remain with her abuser, or she may attempt to escape – with which goes the distinct

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112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at 211.

116. *Id.* at 212.

117. *Fiduccia & Wolfe II*, *supra* note 32, at 25.

118. *See West*, *supra* note 109, at 210.

119. STRONG, ET AL., *supra* note 47, at 5.



possibility of institutionalization if no accessible shelter or permanent housing can be found.<sup>120</sup> This is truly an unenviable choice, but, faced with the loss of independence and less than desirable living conditions associated with institutionalization, some women may choose to stay with, or at least continue to be cared for, by their caregiver/batterer. Additionally, a woman with disabilities who requires assistance with every day life activities like bathing and using the bathroom may want her caregiver/batterer to continue caring for her because she simply might not be comfortable with someone else helping her bathe or use the bathroom. However, if the woman's batterer has begun to be prosecuted, state laws and prosecution office policies will often strip this choice from her. In many states,<sup>121</sup> once a prosecution has begun, a victim is unable to drop the charges because it is the state, and not the victim that brought the charges in the first place.<sup>122</sup> If the caretaker/batterer is in jail, the woman with disabilities will not be able to receive care from him.

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120. Nutter, *supra* note 36, at 339.

121. Jurisdictions which employ "no-drop" policies that do not allow the victim to drop charges include Alexandria, Virginia; Baltimore, Maryland; Brooklyn, New York; Denver, Colorado; Duluth, Minnesota; King County, Washington; Los Angeles, California; and San Diego, California. See Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, n.47 (1996) (citing Casey G. Gwinn, *The Path to Effective Intervention: Trends in the Criminal Prosecution of Domestic Violence*, The Prosecutor, Sept.-Oct. 1993, at 17, 18-19). Further, many state laws encourage or require no-drop policies. See Fla. Stat. Ann. § 741.2901(2) (1995) (requiring the adoption of 'pro-prosecution' policies and permitting the prosecuting attorney to disregard victim reluctance when deciding whether to pursue a case); Minn. Stat. Ann. § 611A.0311(2)(5) (1995) (requiring all county and city attorneys to develop prosecution plans that address methods for gathering evidence other than the victim's in-court testimony); Utah Code Ann. § 77-36-3(1)(e) (1994) (disallowing judicial dismissal of a domestic violence case at a victim's request unless there is 'reasonable cause' to think that the victim would 'benefit'); Wis. Stat. Ann. § 968.075(7)(a)(2) (1995) (directing all district attorneys' offices to 'develop, adopt and implement written policies' that are not based on the victim's consent to prosecute a domestic abuse case). See also *id.* at n.48.

122. Of course, it is worth noting that some jurisdictions allow a woman to drop charges against her batterer. See Hanna, *supra* note 121, at nn.47-48. Further, even in jurisdictions where a woman does not have this choice, a woman can *de facto* drop charges simply by being uncooperative. Usually the victim of domestic violence is the sole witness and sole source of evidence for the prosecution. If she becomes uncooperative, she can effectively halt the prosecution. However, even in light of the fact that there are times when a woman is able to drop charges, a problem still exists because they are many times when a woman is not able to drop charges. There are situations where evidence other than the testimony of the victim exists. In such situations, a woman would not be able to *de facto* drop charges because she would not be the sole source of evidence. Further, even in jurisdictions where a woman has the ability to *de jure* drop charges, prosecutors may pressure her not to do so. This pressure is especially potent when used against women with developmental disabilities. Therefore, there are many situations when a woman with disabilities is unable to drop criminal charges against her caregiver/batterer.

West argued that women must insist on an acceptance of their difference.<sup>123</sup> Here, women with disabilities must also insist on this. The relevant hedonic difference between women with and without disabilities is that some women with disabilities require care and these women might *want* to drop charges against caregiver/batterers. While a woman without disabilities may be able to conceptualize this desire, it is unlikely she will ever be able to feel it the way a woman with disability would. If disabled women are unable to make the choice to drop criminal charges, the law will be ignoring their subjective hedonic lives and will not be accepting their difference. If one takes West's relational theory seriously, this different hedonic preference must be given real and actual legal effect, and every jurisdiction should allow women with disabilities to drop criminal charges against their caregivers/batterers.

Additionally, Kimberle Williams Crenshaw would argue that the theory of intersectionality calls for women with disabilities to be able to drop criminal charges against their caregiver/batterers.<sup>124</sup> Briefly, the idea behind intersectionality is that people experience life multidimensionally; for example both as a woman and as a person with disabilities.<sup>125</sup> The problem is that the law tends to analyze problems from a single axis point of view. For example, the law tries to solve the problems of women and the problems of people with disabilities, but rarely if ever tries to solve the problems of women with disabilities.<sup>126</sup> This single axis approach is problematic because the experiences of multidimensional people such as women with disabilities are marginalized or erased.<sup>127</sup> Truly, this marginalization has occurred in a situation where a woman with a disability may want to drop the criminal charges against her caregiver/batterer so that he can continue to care for her. However, the law – taking a single axis approach and treating disabled women merely as women – disallows this choice because it is not the choice that women without disabilities would make. Therefore, both relational theory and the theory of intersectionality call for the demarginalization of women with disabilities and makes women with disabilities to drop criminal charges against their caregivers/batterers.

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123. See West, *supra* note 109, at 212.

124. Kimberle Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex*, in *CRITICAL RACE FEMINISM* 23 (Adrien Katherine Wing ed., 2d ed. 2003).

125. *Id.*

126. *Id.*

127. *Id.*

Critics of this proposal will likely argue that any woman who wants to drop charges is a victim of false consciousness.<sup>128</sup> These critics would argue that a woman would choose to drop charges against her caregiver/batter not because it is what she wants, but because in doing so, she would please her caregiver/batterer.<sup>129</sup> This criticism is strengthened by the fact that women with disabilities are more relational than other women. For West, women fall victim to false consciousness because they are relational.<sup>130</sup> Because women are interdependent, they often make decisions considering the best interests of others as opposed to considering their own best interest.<sup>131</sup> If this is true, false consciousness poses an even larger risk for women with disabilities because they are more interdependent and more relational than other women.

While this criticism may be logically correct, it is misleading because it focuses on the wrong question. The concept of false consciousness focuses on *why* someone wants something, not on *what* they want. For a supporter of false consciousness, an invalid *why* is a situation where a woman has tricked herself into believing that she wants to do something, when in reality she is only doing it because it pleases a man. Critics of the proposal to allow women with disabilities to drop criminal charges would argue that this proposal is based on an invalid *why*. Then, the fulcrum of the critic's argument is that because there is an invalid *why* there is also an invalid *what*. However, the validity of the *what* is not dependant on the validity of the *why*. Consider the perspective of a woman with disabilities who is being abused by her caregiver/batterer. She wants to drop charges because she does not want to risk institutionalization and because she does not want to be bathed by a stranger. *What* she wants is more important to her than *why* she wants it. Policy decisions should not keep her from *what* she wants merely because some would argue that she is confused as to

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128. A critic could also argue that a woman with sufficiently severe developmental disabilities should not be able to drop criminal charges against her caregiver/batterer because she may not have the capacity to make decisions for herself. To be sure, if a woman is not capable of making every-day decisions for herself then she is not in a position to decide whether charges against her batterer should be dropped. However, not all women with developmental disabilities lack the capacity to make their own decisions. See, e.g., Independent Living Institute, <http://www.independentliving.org/> (last visited July 29, 2007) (an organization devoted help facilitate people with disabilities to live and function independently). To the extent any woman with developmental disabilities is able to make every-day decisions for her self, then she should also be able to make the decision to have the charges against her caregiver/batterer dropped.

129. See West, *supra* note 118, at 210.

130. *Id.*

131. *Id.*

*why* she wants it. Her personal and subjective desire cannot be discounted or ignored, for doing so further marginalizes and reinforces the myth that women with disabilities are childlike.

## V. CONCLUSION

The domestic violence service infrastructure, which is the means of women's escape from domestic violence, inadequately meets the needs of women with disabilities. Reforms must be made to adequately meet their needs. The physical infrastructure must be made more accessible to the need of women with disabilities. Myths and misconceptions about women with disabilities act as barriers to escape from domestic violence, and must be eradicated. Accommodations must be made to the courtroom setting to better serve the needs of women with disabilities. And finally, in situations where a woman with disabilities is abused by her sole caretaker, that woman should be able to drop criminal charges against her caretaker/abuser if she does not want to receive care from someone else.

At its best, feminist legal theory addresses truth and justice – not just the truth and justice of some women, but of all women alike. “Truth is a perspective that sees both what the dominate discourse would have us see and what those who are outside and underneath see as well. Truth is a vision recorded in a wide-angle lens.”<sup>132</sup> This wide-angle lens must capture women with disabilities. Domestic violence is but one of many issues facing women with disabilities that is worthy of discussion. If feminist legal theory is to move towards a more complete and more perfect truth, then issues facing women with disabilities must be incorporated.

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132. Deborah Waire Post, *The Politics of Pedagogy: Confessions of a Black Woman Law Professor*, in *CRITICAL RACE FEMINISM* 131, 138 (Adrien Katherine Wing ed., 2d ed. 2003).

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