Chapter Two

Precursors to the Battered Women's Movement: Domestic Violence Law and Activism before the 1960s

Introduction

The concept of privacy that was employed by courts in the late nineteenth century was rooted in the traditions of classical liberal individualism. This notion of privacy was frequently invoked by judges in domestic violence cases. The privacy to which judges referred, however, was rarely acknowledged as part of that specific tradition: these judges did not mention classical liberalism, nor did they try to find a specific "right to privacy" in the US Constitution. Instead, privacy was referred to in vague, amorphous terms. Judges spoke of privacy as if it were a given, an assumed right. 1

This vagueness meant that the right of privacy could be selectively applied—in certain situations and to certain individuals. Within the context of domestic violence in particular, this right was granted only to men, and to specific men at that. The way in which privacy was invoked in domestic violence cases conveyed a strong affirmation and valuation of the patriarchal, nuclear family form. In these cases, the right of privacy was given to men not just *as men*, but *as the heads of households*. Echoing Locke's formulation of citizen-as-head-of-household, judges' tendency to recognize the right of privacy only for the heads of households made this particular privilege a specifically patriarchal one. 2

Throughout most of the nineteenth century, states were still debating in their courts and legislatures whether and to what extent wife-beating (or "chastisement")[1] should be legal.[2] The legality of chastisement was indisputably a critical issue for victims of domestic violence. Nonetheless, as some feminist historians have observed, the legal right of chastisement may not have been the most important factor in determining the safety of battered women. Elizabeth Pleck, for example, has observed the significance of social and community sanctions against wife-beating during this era. Noting that several states had passed laws rendering chastisement illegal by the late nineteenth century, she suggests that enforcement of such laws was often ineffectual in comparison with the discipline meted out by community members. A variety of groups and individuals—ranging from victims' family members to church congregations to feminists to vigilante groups, and even the Ku Klux Klan—all took deliberate measures to punish batterers and to protect victims of domestic violence.[3] Of course, the motivation of the group providing the sanctions determined who was protected and in what way. Pleck contends that, given the rarity of divorce and the extremely wide range of possible sentences a convicted batterer might face during this era, "the system of formal regulation against wifebeaters was relatively weak and cumbersome whereas the mechanisms for 3

informal regulation were relatively vigorous and extensive."[4] In Pleck's view, the existence or abolition of a legal right of chastisement played only a partial role in the protection of women abused by their husbands in the nineteenth century.

Likewise, historian Linda Gordon has noted that prosecution was not often a viable option for battered wives who were economically dependent on their abusers. She describes the ambivalence many late-nineteenth- and early-twentieth-century wives exhibited toward having their husbands prosecuted for assaulting them. While they were usually afraid of their abusive husbands, battered wives often petitioned for pardons for these same men, recognizing that their husband's income was essential for supporting their children and themselves.[5] Within the context of economic dependence, the legality of chastisement itself appears to have had only limited significance, for, as many battered women realized, successfully prosecuting an abusive husband often left them with minimal options for survival. 4

The debate about the existence of a right of chastisement was undeniably a central element in the legal history of domestic violence in this country. Yet, as Pleck's and Gordon's work reveals, other factors (such as community sanctions and economic dependence) have played a considerable role in mitigating chastisement's importance in this history. I would suggest that privacy is another such factor. The story of domestic violence in the courts at this time reveals that the "right to privacy" (or, at least, judges' perception of such a right) often affected the safety of battered women at least as much as the right of chastisement did. 5

Concepts of privacy held implications and possibilities for activists of this era as well. Because notions of privacy were so strongly ingrained in the issue of domestic violence, questioning those ideas (and/or their relationship to domestic violence) was a potentially powerful gesture. Undermining existing notions of privacy that upheld and supported the acceptance of domestic violence in court and in society at large was a means of attacking the problem of domestic violence itself. The strategies employed by some of the anti-domestic-violence activists of this era indicate that they used this concept to their advantage. 6

In the late nineteenth century, the link between domestic violence and privacy was a strong and explicit one. An exploration of this relationship reveals that the way in which this link was addressed—by courts and activists—was critical to battered women and to the problem of domestic violence overall. In fact, the choices made by nineteenth-century judges and activists regarding the privacy issue would ultimately set the stage for the same issues to reemerge nearly a century later. 7

This chapter begins by tracing the historical development of domestic violence cases and activism in the courts throughout the nineteenth century. Here, I undertake a content analysis of the opinions issued during the nineteenth century by state appellate courts in cases of assault and battery of wives by husbands, as well as published opinions from this same era in cases of 8

divorce on grounds of cruelty. I explore the gender, race, and class ideologies informing these judicial opinions and the ways in which those ideologies interacted with judicial and cultural notions of privacy.

Next, I turn to an exploration of anti-domestic-violence efforts undertaken during the latter half of the nineteenth century. These efforts did not constitute a discrete, anti-domestic-violence or battered women's movement; instead, they occurred primarily within the context of the temperance and women's rights movements. This section therefore examines the ways in which the particular strategies and ideologies of these two movements affected the activism undertaken within them to combat domestic violence. I also consider the ways in which these activist efforts confronted the issue of privacy in pursuing their goals. 9

Having explored the implications of the similarities and differences of the two movements' approaches to the problem of domestic violence, I then trace the history of domestic violence law and activism in the early twentieth century. Generally considered by scholars to be a less active time for law and activism in this arena, this era nonetheless brought several significant developments, both cultural and judicial, to the problem of domestic violence. Finally, the chapter concludes with an analysis of the interaction between courts and activists around the issues of domestic violence and privacy, and a glimpse ahead at the twentieth-century battered women's movement that will be considered in the next chapter. 10

Domestic Violence and Privacy in Nineteenth-Century Courts

Initially, the state did not respond to domestic violence as an issue per se. English common law had held that a man had a right to physically punish his wife, an attitude readily adopted in early-American society. Given this prerogative, domestic violence was not an issue from a legal perspective. This prerogative did not face a consistent challenge within the American legal arena until well into the nineteenth century. 11

A corollary to the doctrine of coverture or marital unity,[6] chastisement was one of a host of "privileges" men acquired upon marriage. According to the marital-unity doctrine, many of a woman's individual rights were effectively negated when she married, as her husband became owner of any property or financial assets she had or might accrue in the future. In turn, a husband was responsible for supporting his wife financially. He also became responsible for her public behavior, as her legal identity became subsumed under his upon marriage. The legal justification for chastisement, therefore, was rooted in the marital-unity doctrine, as William Blackstone explained in his *Commentaries* on English common law in 1765: 12

> For, as he [a husband] is to answer for her [his wife's] misbehavior, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his

> apprentices or children; for whom the master or parent is also liable in some cases to answer.[7]

Over sixty years later, James Kent's *Commentaries on American Law* echoed Blackstone's treatment of this issue and applied it to the American context:

> As the husband is the guardian of the wife, and bound to protect and maintain her, the law has given him a reasonable superiority and control over her person, and he may even put gentle restraints upon her liberty, if her conduct be such as to require it.[8]

American legal discourse of the early nineteenth century thus unequivocally set the stage for continued state sanctioning of domestic violence.

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During that same decade, the first judicial opinion in the United States was written in which domestic violence was overtly condoned. *Bradley* v. *State* was decided in Mississippi in 1824. In this case, the court explicitly recognized the right of chastisement, and justified it as follows:

> Family broils and dissentions cannot be investigated before the tribunals of the country, without casting a shade over the character of those who are unfortunately engaged in the controversy. To screen from public reproach those who may thus be unhappily situated, let the husband be permitted to exercise the right of moderate chastisement in cases of great emergency, and use salutary restraints in every case of misbehavior, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned.[9]

Several aspects of this opinion are worth noting. First, the importance of privacy is already visible. While the *Bradley* opinion does not refer specifically to a "right of privacy," it invokes a reasoning that clearly prizes domestic privacy. In fact, this opinion suggests that the major reason for allowing husbands the right of "moderate chastisement" is to spare them the shame that would come from having such deeds aired in public. In other words, keeping such matters *private*—and avoiding "public reproach"—is far more important than punishing the violent act. Additionally, the judge suggests that prosecution would publicly embarrass both the abuser and the abused equally, as the husband's violence would somehow render both parties' characters suspect. In this first opinion, not only is privacy used to justify the state's refusal to condemn domestic violence, but this unwillingness to prosecute batterers simultaneously masquerades as a form of protection for battered women. Overall, privacy's function in court as a defense for batterers (and therefore as an impediment to the safety of battered women) has a firm foundation in this opinion.

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While *Bradley* is best known to scholars for its recognition of the right of chastisement, its justification for that right—in notions of privacy—may be even more significant. Throughout the nineteenth century, as courts debated the right of chastisement, attitudes about privacy often overshadowed this discussion by ultimately deciding the outcome of the case. For example,

State v. *Black*, a North Carolina case from 1864, echoes *Bradley*'s affirmation of the right to chastisement by grounding that right in a respect for the privacy and sanctity of the domestic sphere:

> the law permits [the husband] to use towards his wife such a degree of force, as is necessary to . . . make her behave herself; and unless some permanent injury be inflicted, or there be an excess of violence . . . the law will not invade the domestic forum, or go behind the curtain. It prefers to leave the parties to themselves . . . to make the matter up and live together as man and wife should.[10]

In another opinion, just four years later, the same court refused to recognize the right of chastisement. The outcome of the case, however, ultimately differed very little from that of *Bradley* or *Black*, for the judge refused to convict the abusive husband of assault and battery. In this case, the husband's lack of a right to beat his wife was rendered inconsequential by the privacy issue:

> The courts have been loth to take cognizance of trivial complaints arising out of domestic relations. . . . [B]ecause the evil of publicity would be greater than the evil involved in the trifles complained of. . . . However great are the evils of ill temper, quarrels, and even personal conflicts inflicting only temporary pain, they are not comparable with the evils which would result from raising the curtain, and exposing to public curiosity and criticism the nursery and the bed chamber.[11]

This opinion also states explicitly that the "violence complained of would without question have constituted a battery if the subject of it had not been the defendant's wife."[12] Because of the relationship of the victim to the perpetrator, therefore, the sanctity and inviolability accorded to the marital "bed chamber" was enough in this case to turn an otherwise-criminal act into an acceptable part of domestic life.

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Racial politics, including attitudes that existed both within and outside of minority communities, added further complexity to the issue of privacy. First, some African Americans, concerned about the way in which their status in the larger society would be affected by the publicizing of domestic violence cases, implored victims within their own community to keep such incidents private. In addition, white police imposed their own racial, class, and ethnic prejudices in the arresting and reporting of domestic violence incidents, ultimately painting for judges as well as for the general public a biased, race- and class-specific portrait of batterers and their victims. Various forms of racial and other prejudice were used within the courtroom against perpetrators as well as victims. Thus, by disproportionately punishing African-American, immigrant, and poorer batterers, judges and police used instances of domestic violence as a means to control nonwhite masculinity.

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During the Reconstruction years of the late nineteenth century, in which the horrors of slavery had barely begun to recede, the self-preservation of the black community remained a high priority.[13] As many black feminist theorists have observed, an essential component of this self-preservation (one that remains to this day) consisted of not airing the "dirty laundry" of the

community to the larger society. As Beth Richie notes, "Too many blacks still think this [domestic violence] is a divisive issue that should not be aired in public." She continues, "It is a painful, unsettling task to call attention to violence in our community. You may find yourselves feeling caught by the trap called loyalty. There is already so much negative information about our families that a need to protect ourselves keeps us quiet."[14] Such sentiments were even more prominent in the late nineteenth century, a time that many African Americans saw as crucial for their integration into American society.[15]

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The hesitation to expose negative aspects of black family life was founded on a quite legitimate fear that whites would use them in the service of racial stereotyping. When this hesitation translated into a request for black women to keep incidents of domestic violence private, however, it left these victims with fewer options than ever. Several African-American newspapers of the time unfortunately did just that. The *Savannah Colored Tribune*, for example, showed little sympathy for battered women of color:

> The habit of these dirty colored women of arresting their husbands every time they have a family quarrel is becoming intolerable and should either be stopped or colored men should stop marrying. White families quarrel and disagree as much as colored do but you never hear of white women however low they may be running to the magistrate to have their husbands jailed.[16]

Here, racial and class stereotypes served as a means of promulgating the goal of privacy. Presumably responding to white America's stereotypes about the inferior nature of African-American culture, the author seems defensive: if the "dirty colored women" would simply keep such matters in the private realm where they belong, the implication is, they would stop degrading their race below the "lowest" of the whites. Battered black women are left with an unthinkable dilemma: to suffer the abuse in silence as a matter of race loyalty, or to attempt to seek legal recourse and consequently suffer the very real possibility of being ostracized from within the community.

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This dilemma was further complicated for women in minority communities by the racial prejudices apparently informing law enforcement at this time. Police of this era made significantly more domestic violence arrests of immigrant men and men of color than of white men, with immigrant men being most commonly arrested in the North (where fears of Irish, Hungarian, and other immigrants echoed the racial prejudice of the South), and African-American men in the South.[17] For instance, Pleck reports that

> Between 1889 and 1894, fifty-eight out of sixty men arrested for wifebeating in Charleston, South Carolina were black. . . . [I]t seems likely that some white as well as black husbands were beating their wives in Charleston and that the racial differential in arrests there reflected the unwillingness of the police to arrest white wifebeaters.[18]

Limited historical records make it impossible to know the extent to which these arrest patterns reflect or distort actual patterns of domestic violence incidents or reports. Nonetheless, other contemporaneous evidence suggests that such numbers are undoubtedly influenced by prevailing attitudes of the era that viewed wife-beating as the recourse of the "dangerous classes."[19]

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Such race, class, and ethnic biases emerged in the courtroom as well as in the police force. Feminist historians have questioned whether, in some cases, judges' willingness to repudiate the right of chastisement, like police willingness to arrest abusive husbands, was more reflective of a wish to control black and immigrant masculinity than of a desire to protect battered women.[20] In one of the most well-known cases repudiating the right of chastisement, *Fulgham* v. *State*, both the victim and the perpetrator were emancipated slaves. In this 1871 case, the wife had protested her husband's chastisement of one of their children as being too harsh. In response, the husband struck her twice on the back with a board. After the husband was indicted on charges of assault and battery, he appealed the decision. The Alabama Supreme Court allowed the prosecution, declaring that "the wife is not to be considered as the husband's slave."[21] In another decision repudiating the right of chastisement in 1894, the Supreme Court of Mississippi referred to "a belief among the humbler class of our colored population of a fancied right in the husband to chastise the wife."[22]

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Siegel asks, with regard to the *Fulgham* opinion, whether the court's apparent sympathy for the abused wife was meant "to ensure that the woman was not treated like a 'slave,' or to prevent her recently emancipated husband from asserting the 'privileges' of a master?"[23] The larger issue raised by this question—the extent to which judges used domestic violence as a means of controlling nonwhite masculinity—resonates far beyond the *Fulgham* case. The words judges chose in domestic violence cases involving racial and ethnic minorities suggest that their intentions were not solely focused on protecting women from abuse. The overt reference to the race and class of the *Harris* couple, together with the implication of a husband who does not know his place ("fancying" a right that does not belong to him), is just one example.

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As with racial, ethnic, and class prejudices, judges' stereotypes about gender roles also reinforced their ideas about privacy and domestic violence. In particular, Barbara Welter observes that the "cult of true womanhood" cultivated during the late nineteenth century emphasized piety, chastity, submissiveness, and domesticity.[24] Likewise, the flip side of these same gender ideologies enabled judges to confer an unspoken right of privacy on men as heads of their households and "kings of their castles." In this way, gender roles and notions of privacy were mutually reinforcing. According to this logic, it was only natural that the husband, as head of the household (a unit protected from government interference), deserved control of his wife, particularly if she were to transgress her proper role. The cult of true womanhood, however, did not apply to all women equally: in fact, the attainment of "true womanhood" was largely impossible for women of color and poor women, solely as a result of their race or class

status. Thus, in the same way that privacy as the head of the household was less available to African-American, immigrant, or poor men than it was to middle- or upper-class white men, courts' gendered expectations of women differed by race and class as well.[25]

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Gender ideologies such as the "cult of true womanhood" formed the basis for a great deal of judicial justification for the refusal to penalize domestic abuse. The same year the *Fulgham* case was being decided in Alabama, the Supreme Court of Iowa expressed a very different opinion in *Knight* v. *Knight*. In this case, the Supreme Court affirmed a lower court's refusal to grant Mrs. Knight a divorce on the grounds of cruel treatment. The opinion suggests that her own "misconduct" had provoked the violence, thereby rendering her ineligible for a divorce on such grounds. After noting with disapproval that the wife possessed "a will which never yields,"[26] the opinion continues:

> The gentle, fragile, submissive woman might be entitled to a divorce which would scarcely furnish the amazon just cause of complaint. . . . We have not a particle of doubt that if she had justly appreciated the responsibilities and duties of her position, had properly regarded the feelings of her husband, had restrained her pride and guarded her temper, she might have remained one among the most honored and the most cherished of wives.[27]

The *Knight* opinion, with its subtle invocation of class distinctions (between the "gentle, fragile" woman [i.e., a true lady] and the [presumably rougher, unrestrained, not submissive, and unladylike] "amazon"), is also a powerful reminder that conforming to prescribed gender norms was essential to the nineteenth-century woman's safety.

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Knight, however, was actually a milder echo of an earlier New Hampshire case, *Poor* v. *Poor*. Like *Knight*, *Poor* was a divorce case in which the court rejected the wife's claim of extreme cruelty (based on, among other offenses, her husband's "beat[ing] her cruelly with a horse-whip [and] imprison[ing] her in the cellar").[28] Instead, the opinion notes that the wife was "of a high, bold, masculine spirit; . . . and not always ready to submit, even to the legitimate authority of her husband."[29] Mrs. Poor's unwillingness to submit to her husband's authority as the head of the household was, in the eyes of the court, provocation and justification for the abuse she suffered. The opinion suggests that "she escaped with quite as little injury as she could have had any right to expect, in such an attempt to take his castle by storm."[30] Furthermore, the court contended, "due to the relation in which she stood to her oppressor, if she could not obtain his consent by kindness and condescension, she should have submitted in silence to the wrong he was doing her."[31] In this no-win formulation, wives should submit to their husbands as a prerequisite for their own safety. If, however, this approach fails and they are abused anyway, they should simply acquiesce and endure the abuse. The opinion concludes with this admonition: "the wife has no right to complain . . . she drew upon herself the chastisement she received, by her own improper conduct. . . . Her remedy is to be sought, then, not in this court, but in a reformation of her own manners. Let her return to the path of duty."[32] In essence, Mrs.

Poor's failure to conform to gender-role expectations—which the court read as a refusal to submit to her husband's legitimate authority as head of his household—effectively erased any legal recourse whatsoever for the violence she endured.

24 These gender ideologies were often explicitly rooted in the doctrine of Christianity. Many judicial opinions in domestic violence cases of this era quoted liberally from the Bible. In particular, judges referred to the proper role of a wife, and her transgression of that role, as justification for the abuse itself as well as the court's refusal to intercede on her behalf. Of Mrs. Poor, for example, the court asked, "what course of conduct did duty prescribe to a Christian wife and to a member of the church? …[C]harity that suffereth long and is kind . . . not only believeth and hopeth, but *beareth and endureth all things*."[33] Another case cited the book of Genesis in defense of an abusive husband's behavior: "Unto the woman it is said, 'Thy desire shall be to thy husband, and he shall rule over thee,' Genesis, ch. 3, v. 16."[34] Likewise, other elements of Christianity also influenced the outcome of domestic violence cases. In some cases, women were denied divorce despite evidence of cruel treatment because they were alleged to have committed adultery, a sin which presumably justified the violence they experienced.[35]

25 Within the context of such strict gender roles, the concept of shame—specifically, avoiding bringing shame to men—looms large. Judicial opinions of this time give the impression that adherence to prescribed gender and marriage roles is of such importance that divergence from them would result in a humiliation that should be avoided at all costs. Again, keeping the violence private—especially by refusing to punish it—was a means of avoiding this humiliation. The *Joyner* v. *Joyner* opinion, which pardoned a husband's physical violence in light of his wife's "provocation" of the abuse, declared that "if . . . the wife persistently treats her husband with disrespect, and he submits to it, he . . . loses the respect of the other members of his family, without which he cannot expect to govern them, and forfeits the respect of his neighbors."[36] The author of the opinion in another domestic violence case lamented, "It would be hard if, for the single act [of violence], he must incur the forfeiture of forced separation, the record of which must forever be a source of mortification to himself . . ."[37] Echoing the "mutual discredit and shame" alluded to in the *Bradley* opinion several decades earlier, these opinions referred to the humiliation of publicity. Unlike *Bradley*, however, neither the *Richards* nor the *Joyner* opinion identified the violence itself as the source of embarrassment. Instead, these judges feared the shame a husband might suffer within the community if he were exposed to be anything less than the ruler of the household. A husband's violence toward his wife is seen here as a legitimate mechanism for reinforcing both his dominant position in the household hierarchy as well as the privacy of that sphere.

26 Similarly, the concept of "family government" that emerged in several domestic violence cases during the late nineteenth century only reinforced these ideals. Several judges of this era interpreted the adage about the husband as the "king of his castle" quite literally. This concept, which combined gender-role ideologies with the utmost respect for marital privacy, led judges in

some cases to view the nuclear family as a self-governing unit. This unit was not to be disturbed by the reach of state government except in the most extreme of cases. The author of *State* v. *Rhodes* relied upon this formulation very explicitly in his refusal to indict a husband for assault and battery:

> Our conclusion is that family government is recognized by law as being as complete in itself as the State government is in itself, and yet subordinate to it; and that we will not interfere with or attempt to control it, in favor of either husband or wife, unless in cases where permanent or malicious injury is inflicted or threatened, or the condition of the party is intolerable. . . . Every household has and must have, a government of its own, modelled to suit the temper, disposition and condition of its inmates.[38]

Given its status of near-immunity from state intervention, this formulation of family government provides husbands, as the heads of that "government," with a staggering amount of power, particularly in relation to domestic abuse. And while the final sentence of the excerpt suggests that such an arrangement might take into account the interests of all family members, there is no indication that any judge of this era was seriously considering the possibility of women or children as equal partners in such government. As another judge observed,

> It has not been denied that he [the abusive husband] is the legal head of the whole family, wife and children inclusive; and I have heard it urged from no quarter that he should be brought under subjection to a household democracy. All will agree, I apprehend, that such a measure would extend the right of suffrage quite too far.[39]

This hierarchy is clearly echoed by other judges in simple statements such as "Every man must govern his household"[40] and references to "the rights and power of the husband as head of the family."[41] Under a system in which physical abuse is often viewed by judges as a legitimate exercise of this power, and courts grant the abuser himself the authority to rule over his wife, the privacy of the home clearly privileges and protects men, thereby often eliminating any legal recourse for a woman experiencing violence at home.

Just as individual judges' approaches to this issue inevitably vary, legal options for battered women likewise varied widely by state throughout the second half of the nineteenth century, as courts continued to ponder the existence of a right to chastisement. As early as 1838, a Delaware court declared that "the wife must be protected. We know of no law that will authorize a husband to strike his pregnant wife a blow with his fist, such as has been inflicted on this woman."[42] Here, the court sees its role quite clearly as that of protector, presumably at least in part because the wife was pregnant. Only four years later, a New York court came to a much different conclusion, arguing that complete repudiation of the chastisement right would lead to moral corruption: "In asserting the principle on which the barbarous practice of correction was abolished, the courts should beware of the opposite extreme. . . . Much as we may congratulate ourselves on the abolition of unreasonable severity, such an achievement would but poorly compensate for the general corruption of domestic morals."[43] An 1857 Pennsylvania opinion expressed a similar sentiment, concluding that "it is a sickly sensibility which holds that a man

may not lay hands on his wife, even rudely, if necessary . . ."[44] Throughout the nineteenth century, there was no judicial consensus on the issue of the right to chastisement. Even if such consensus had existed, some courts' decisions about whether to punish abusive husbands depended more upon the court's view of privacy than on the role of chastisement itself. Therefore, any battered woman's chances in a given courtroom were fairly impossible to predict.

28 As the nineteenth century drew to a close, however, such a consensus was in sight. In fact, the extent to which the legal response to domestic violence was beginning to coalesce seemed quite promising by 1871, for that year saw two landmark cases and one powerful concurrence in which the right to chastisement was expressly repudiated. In the Massachusetts case of *Commonwealth v. McAfee*, a husband had caused his wife's death by striking her on the cheek and temple while she was intoxicated, thus causing her to fall and hit her head. The trial judge refused to endorse the defendant's contention that he "had a legal right to administer due and proper correction and corporeal [*sic*] chastisement on his wife," and the Massachusetts Supreme Court affirmed: "Beating or striking a wife violently with the open hand is not one of the rights conferred on a husband by the marriage, even if the wife be drunk or insolent."[45]

29 The *Fulgham* case, discussed earlier for its racial implications, was the other landmark case repudiating chastisement that year. The Alabama Supreme Court, deciding to allow the husband's prosecution, declared that

> The husband is . . . not justified or allowed by law to use [any weapon] for [his wife's] moderate correction. . . . And the privilege, ancient though it be, to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law. . . . [I]n person, the wife is entitled to the same protection of the law that the husband can invoke for himself. . . . Her sex does not degrade her below the rank of the highest in the commonwealth.[46]

Fulgham, like *McAfee*, was an indication that the legal system had begun to recognize domestic violence as unacceptable behavior.

30 Bolstering these two cases' refutation of the right of chastisement was the concurrence in Iowa's *Knight* v. *Knight* case that same year. This concurrence, written by Justice Miller, represents a stark contrast to the misogyny and gender stereotyping in the *Knight* majority opinion, condemning the majority's suggestion that the wife deserved the abuse by failing to be a "fragile, submissive woman." Although he concurred in the *Knight* judgment for jurisdictional reasons, Miller flatly rejected the majority's position on domestic violence. Instead, he protested,

> [the plaintiff's] faults are no justification or even palliation of the husband's ill-treatment of her; nor should she be denied all remedy for such ill-treatment because she has not been at all times an *humble* and *submissive* wife. . . . No

> provocation, in my opinion, will justify a man in cruel and inhuman treatment of his wife, or deprive her of her right to be divorced.[47]

Thus, while *Knight* did not represent a victory, either for the plaintiff in the case or for battered women more generally, Miller's concurrence—especially when viewed alongside the *Fulgham* and *McAfee* opinions—represented a significant development in the legal response to domestic violence.

31 This trend toward legal refutation of the right of chastisement emerged as a confluence of factors. As legal historian Reva Siegal observes, public discussions of wife abuse became increasingly complex as the nineteenth century progressed.[48] Increased industrialization, urbanization, and immigration were bringing significant changes to the shape and character of American life and allowing many to envision a different future for the nation, one that reflected a variety of social changes. Although many cases since *Bradley* had very specifically recognized a right of chastisement, the various social movements gaining prominence in America by the mid-1800s (including the abolition, suffrage, and temperance movements) had begun challenging previously held beliefs about acceptable behavior. Societal norms regarding such issues as drinking and slaveholding were called into question, and fundamental values became subject to re-examination. As abolitionists chided slaveholders for their "barbaric" physical abuse of slaves, temperance advocates wondered publicly how "civilized" men could, under the influence of alcohol, cruelly beat their wives. Within this climate of social change, attitudes about domestic violence began to shift in both popular and legal discourse.

32 Likewise, as courts began to condemn domestic violence, the community response to this problem changed as well. Elizabeth Pleck's examination of community response during this era concludes with the observation that as punishment for batterers became more formalized (with courts administering official state sanctions), communities' sense of responsibility for this discipline declined.[49] This analysis suggests that the nature of the legal system itself reinforces the privacy paradigm. Specifically, the legal system's emphasis on individual culpability takes the mechanism for social control away from local communities. Indeed, the presence of formal justice administered at the individual level lessens the perceived need for more informal responses at the community level. In this way, the shifting community response to this problem is another factor strengthening the link between privacy and domestic violence.

33 At the same time, however, the issue of community response serves as an important reminder of the disjuncture between the role of privacy in domestic violence cases in court, and its role in domestic violence situations at home. The privacy that appeared in judicial opinions as a right that was naturally held by heads of households seemed to suggest that domestic violence was an issue to be dealt with inside the home. Nevertheless, church, neighborhood, and even vigilante groups had for years responded to this ostensibly private violence strongly and often publicly, with acts ranging from expulsion of batterers from church congregations to public

flogging of batterers.[50] The nature and prevalence of such actions indicate that the home—and the problem of domestic violence—was never quite as private as those judicial opinions might lead one to believe.

In addition to local and community groups, groups of women activists were responding to the issue of domestic violence at this time as well. These activists working to end spousal abuse addressed this problem from a range of diverse perspectives and from within a variety of organizations and social movements. They also employed a wide array of strategies in their attempts to combat the problem. While some strategies and some movements were more effective than others, one of the most compelling characteristics of this era is the extent to which these activists were able to disrupt the privacy paradigm with regard to domestic violence. 34

Anti-Domestic-Violence Activism in the Late Nineteenth Century

For those working to end domestic violence in the late nineteenth century, the privacy issue presented unique ideological problems, for their efforts emerged within the context of numerous other contemporaneous movements, each with different theoretical and strategic approaches. Most notable among these were the temperance reform movement and the women's rights movement. While the influence of other social trends was certainly felt at this time as well, the majority of activism on behalf of battered women was aligned with either or both of these causes. As such, anti-domestic-violence efforts at this time did not constitute a discrete, cohesive, or organized movement. Indeed, only one organization in the nineteenth century, the Protective Agency for Women and Children, located in Chicago, sought specifically to protect abused wives.[51] Instead, activism that addressed the problem of domestic violence at this time usually occurred under the rubric of either the women's rights or the temperance movement. A comparison of these two movements is particularly useful, therefore, for an examination of the ways in which their strategies and ideologies differed with regard to domestic violence. 35

While individuals within both the women's rights and temperance movements addressed the problem of domestic violence through speeches, writings, and other means, neither of these movements adopted any formal stance on this issue. Nor did the leadership of either movement ever officially proclaim the eradication of domestic violence to be one of its goals. Nonetheless, the late-nineteenth-century activist efforts outlined in this chapter merit scholarly attention, as they represent the first wave of anti-domestic-violence activism occurring within the context of organized social movements. 36

Before examining these efforts against domestic violence, however, it is important to unpack the concept of the "women's rights movement" through which much of this activism occurred. Historians of the women's rights movement during the nineteenth century agree that this movement was characterized by several sharp ideological divisions, particularly with regard to 37

the issue of suffrage. These divisions led to the formation of numerous different organizations pursuing a variety of strategies, with varying degrees of success. As Steven Buechler observes, women's rights activism in the latter half of the nineteenth century and the opening decades of the twentieth century occurred in three phases.[52] Each of these phases was marked by the creation, prominence, dissolution, or merger of various organizations, as competing priorities and ideologies within the movement shifted over time.

38 Buechler defines the first phase, the period from 1840 until 1869, as the origin of the women's rights movement. During the early years of this period, activism on behalf of women's rights occurred fairly informally, within the context of the abolitionist movement, as no formal organizations yet existed for the purpose of furthering women's rights. Nonetheless, by the late 1840s, numerous conventions were being held to address the subject of women's rights. The Civil War first disrupted then eventually galvanized the burgeoning women's rights movement. Initially, the war diverted potential activist attention from the cause of women's rights, yet the national debates about equality in voting that followed the war helped to focus the women's movement on the issue of suffrage. In this first phase, therefore, activists in the women's rights movement quickly focused on universal rights and suffrage, aligning their cause with that of African Americans. Thus, by the end of this phase, women's rights activists had created their first formal organization, the American Equal Rights Association, that overtly linked issues of racial and sexual equality.[53]

39 This willingness to address issues of race and sex simultaneously would prove to be a contentious one for the women's rights movement during its second phase, from 1869 to 1890. During this phase, women's rights activists often found themselves having to choose whether to prioritize suffrage for African Americans or for women. Within both abolitionist and women's suffrage groups, activists often felt that alliance with the other group would weaken their own chances for success. At the same time, some women's rights activists felt that continued allegiance to the abolitionist and Republican interests represented their *only* chance for success. This philosophical and strategic dispute eventually caused a rift between some of the leading figures in the women's rights movement, leading to the formation of rival suffrage organizations.[54]

40 Susan B. Anthony and Elizabeth Cady Stanton, impatient with the Republicans' seeming reluctance to wholeheartedly embrace the cause of women's suffrage, broke their ties with Republicans and, in 1869, opposed the passage of the Fifteenth Amendment because, in granting suffrage to black men, it reiterated the disenfranchisement of all women. Later that year, Stanton and Anthony formed the National Woman Suffrage Association (NWSA), devoted to supporting all women's issues and to being an organization "controlled and defined by women" first and foremost.[55] Several months later, woman suffragists who were more loyal to their Republican roots, including Lucy Stone and Henry Blackwell, formed the American Woman Suffrage Association (AWSA), which reflected those loyalties.[56] The differences between these two groups, however, consisted not merely in their political allegiances, but also

in their ideologies. As Buechler notes, "The ideological posture of [NWSA] was decidedly radical, identifying the connections between women's oppressions and tracing them ultimately to marriage and the sexual division of labor. The ideology of [AWSA] stopped short of such a holistic critique of women's position, restricting its focus to the right to vote."[57] Nonetheless, these ideological differences, so prominent upon the formation of the two groups, did fade over time. Given the proliferation during the 1870s and 1880s of organizations devoted to women's issues apart from the cause of suffrage (including the temperance movement, which had strong female leadership and often focused on the concerns of wives and mothers), NWSA and AWSA focused much of their energies on simply "maintain[ing] the vitality and political focus of these . . . organizations in an increasingly crowded organizational field."[58] As a result, the overt political successes of these organizations during this period were limited; indeed, their main success of this era was simply maintaining the existence of the movement, which would eventually regain momentum after 1890.

41 As the leadership of NWSA and AWSA changed and the groups' ideological differences grew less apparent, they eventually merged in 1890 to form the National American Woman Suffrage Association (NAWSA), thereby ushering in the third phase of women's rights activism. This third phase, lasting from 1890 until the passage of the Nineteenth Amendment in 1920, witnessed the growth of NAWSA into a large organization with more broad-based appeal (and a greater diversity of perspectives) than either NWSA or AWSA had previously held. NAWSA's inclusive stance, however, also rendered it less focused than either of its parent organizations had been, and it was challenged in 1914 by the emergence of a rival organization, the Congressional Union (CU), which had developed from within its own ranks. The CU shortly merged with the Woman's Party to become the National Woman's Party (NWP), which employed more radical tactics such as pickets and hunger strikes to call attention to the suffrage cause. In the face of such radical tactics, NAWSA came to be perceived as moderate by comparison. Ultimately, this interplay between the two factions within the movement, in concert with the employment of both state-level and federal strategies, led to the passage of the Nineteenth Amendment in 1920.[59]

42 My discussion of anti-domestic-violence activism within the women's rights movement focuses primarily on the second phase, for several reasons. First, this is the era in which the majority of activism around domestic violence occurred. This time period also corresponds with the proliferation of domestic violence court cases that I have examined earlier in this chapter. The journals that addressed the problem of domestic abuse, such as the *Revolution*, the *Woman's Advocate*, and the *Woman's Journal*, were also published during this time period. Finally, as Buechler observes, this phase was characterized by the proliferation of numerous other women's causes, including the temperance movement, and this context is helpful for my comparison of the two approaches.

43 I have deliberately contextualized the late-nineteenth-century women's rights movement in this way, emphasizing the ideological and strategic differences within the movement, in order to avoid oversimplifying the nature of the movement itself. It is not my intention to present the

women's rights movement at this time as a cohesive, ideologically unified whole that can be easily contrasted with the temperance movement. Nonetheless, I believe that with regard to the issue of domestic violence, several useful distinctions can be made between the efforts undertaken by women's rights activists and those undertaken by temperance activists. For, while it is true that different groups of women's rights activists approached the issue of suffrage in different ways, the movement itself was inherently somewhat more radical than the temperance movement. The temperance movement did not, for the most part, challenge the assignation of women to the private sphere; instead, it simply sought increased power for women within this domestic arena. This fairly conservative approach did not seek to disrupt the framework of the public/private divide, but rather to work within it. In contrast, the women's rights movement deliberately sought to move women into the public sphere; both the radical and conservative factions within the movement worked, via the drive for the enfranchisement of women, to allow women access to the traditionally male-identified arena of politics. As a result, despite the ideological divisions that existed within these movements, it can be said that the women's rights movement was, broadly speaking, somewhat more radical in nature than the temperance movement, and this basic difference had interesting implications for the two movements' approaches to the problem of domestic violence.

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Furthermore, despite ideological differences within the women's rights movement, women's rights activists shared similar approaches to the problem of domestic violence. As Elizabeth Pleck has noted, "Although Stone and Blackwell were regarded as the conservatives of the women's rights movement, their analysis of crimes against women was virtually identical with that of Stanton and Anthony. They, too, believed that abuse of wives grew out of a husband's ownership of his wife as a form of property—'domestic tyranny,' as they sometimes called it."[60] Like Pleck, I believe that it is both possible and useful to speak in terms of a "women's rights" approach to domestic violence that, while not entirely unified, can nonetheless be distinguished in many ways from the temperance approach to this problem.

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Of course, it is important to recognize that the overall division between the two movements is far from exact. The most obvious factor problematizing this distinction is the fact that some of the same activists participated in both struggles at various points in their careers. Elizabeth Cady Stanton, for example, notably aligned with the more radical faction of the women's rights movement during its second phase, had previously worked with temperance reformers during the mid-1800s.[61] In addition, like all movements, both the women's rights and the temperance movements housed internal divisions and experienced changes over time.[62] Overall, however, they can be said to represent two different approaches to the issue of domestic violence in the late nineteenth century.

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Indeed, several feminist historians have noted the more conservative tenor of the temperance movement in comparison to the overtly political, sometimes radical nature of the women's rights movement.[63] This characterization presents a meaningful framework with which to compare the two axes of nineteenth-century efforts against domestic violence. At the same time, it

remains critical to resist the temptation to generalize this description beyond its usefulness. This discussion acknowledges and explores this division between ostensibly conservative and radical movements, while also observing the inevitable complexities that problematize such a dichotomy, including the often-overlapping agendas of the two movements.

Perhaps the most obvious theoretical difference between the two pertains to the ways in which they addressed the notion of "separate spheres." The prevailing gender ideology of the middle and upper classes of the time, "separate spheres" implied that the public sphere of business, commerce, and political life belonged or should belong to men, while the private sphere of the home and domesticity was the natural domain of women.[64] Conflicting responses to this principle often meant very different strategies for combating domestic violence. On one hand, the temperance movement often reinforced traditional separate spheres ideology by promoting an end to alcohol abuse and physical abuse as a way to restore the peaceful domesticity of the private sphere.[65] Simultaneously, within the more radical branches of the women's rights movement, activists were advocating a complete overhaul of patriarchal families, identifying these homes as sites of risk and oppression rather than safe havens for women. These contrasting approaches to the ideology of separate spheres highlight an issue that had significant implications for the issue of domestic violence. **47**

Domestic Violence and the Temperance Movement

Given the somewhat more conservative nature of the temperance movement, it may initially seem surprising that much of the activism on behalf of battered women in the nineteenth century was carried out under the rubric of the temperance movement. There are several reasons for this pairing. The heightened climate of activism of the post–Civil War years saw many former abolitionists turning their attention to other causes, the temperance movement being one of the primary beneficiaries of that energy. From the perspective of the largely middle- and upper-class women able to do activist work at this time, alcohol was very much a woman's problem. Being situated so firmly in the domestic domain, women were seen to bear the brunt of their husbands' abuse of alcohol, particularly when men returned to the home intoxicated and violent. It seemed logical, therefore, that women would emerge as leaders and workers in the temperance movement, approach the issue from a woman's perspective, and focus on related problems such as domestic violence. Most notably, the Woman's Christian Temperance Union (WCTU), which gained prominence as "both the leading temperance organization and the leading women's organization in the United States" in 1873, quickly became a forum for women's activism around a variety of social issues, including domestic violence.[66] **48**

For the most part, the temperance movement dealt with the problem of domestic violence indirectly. Many temperance workers at this time believed alcohol to be the sole cause of domestic abuse, and this belief logically suggested that eradication of alcohol consumption would eliminate the violence. Thus, temperance workers were more likely to raise the issue of domestic violence as another reason for promoting abstinence from liquor than they were to **49**

confront the violence per se. It only furthered the temperance cause to raise the subject of domestic violence as one in a long list of evils resulting from alcohol consumption. In this way, the previously taboo subject of domestic violence suddenly began appearing in temperance journals and publications. The *Lily*, which was a "journal devoted to temperance and literature" edited by Amelia Bloomer, proclaimed that "Women are the principal sufferers from intemperance. . . . [T]he insults, the blows, the murders which flow in such awful profusion from the intemperance of husbands, fathers, sons, brothers, fall with heaviest, most crushing force upon woman."[67] Early on, temperance advocates linked the abuse of alcohol with the abuse of women.

The temperance movement did not hesitate to rely upon traditional notions of woman's moral superiority when addressing the issue of domestic violence. Urging women readers to avoid the company of intemperate men, Cora Leslie wrote to the *Lily*, **50**

> Alas, what should we be, if we should follow in the path of these would be "lords of creation!"—Licentiousness, gambling, profanity, and intemperance are among the qualifications which belong to many of them. . . . And if we can withstand all these temptations, which make victims of so many of the sterner sex, are we not in reality, the superiors? Should we not look with *pity* upon such *frail*, *weak-minded* specimens of humanity?[68]

By invoking and embracing traditional stereotypes of woman's inherent moral superiority, temperance workers made their position a difficult one for even their most conservative opponents to dispute. At the same time, pushing those ideas further to portray men as weak-minded and inferior—and to question their position as "lords of creation"—allowed these activists to claim a power and a legitimacy for their cause that such traditional ideas did not usually foster.

This gender stereotyping, rooted in claims of women's moral superiority, was prominent even when temperance workers supported the cause of woman suffrage. These activists sometimes promoted voting rights for women as a means of winning temperance, and therefore restoring peace to the domestic sphere. As Buechler observes, "For temperance reformers, the right to vote was conceived as a means of carrying out women's traditional, culturally scripted duty of protecting the home rather than the symbol and substance of an emancipatory movement to gain women's rights and promote sexual equality."[69] This approach assumed that women's stronger sense of morality would naturally lead them to support the temperance cause at the polls—and would thereby help to save women's lives in the process. One temperance worker asked, "[H]ow many wives would have been saved from premature graves, to which they were hurried by misery or murder . . . from the anguish of brutal curses and still more brutal blows had women been endowed with the right of suffrage from this question *alone*, only twenty years ago?"[70] The higher standard of ethics that women would bring to the political process if suffrage were granted was seen as an additional benefit. This same writer contended that woman's right to vote, even if only on the single issue of temperance, "would promote domestic **51**

tranquility; for it is much more frequently disturbed by men than by women," and furthermore "[women's] presence [at the polls] would shame or soften the worst [men] into . . . good behavior, and improve the behavior of the rest."[71]

Despite the often conservative rhetoric it employed, the temperance movement was nonetheless quite radical in many ways. In some cases, temperance writers used prevailing notions about morality and women's roles to argue for the dissolution of abusive marriages. A Mrs. Swisshelm, for example, contended in the pages of the *Lily* that "it may be very angelic for a pure-minded, virtuous woman to love and caress a great drunken beast, but . . . we have not the slightest pretensions to being an angel." She continued, "[S]o far from its being a duty for a wife to live with a drunken husband it is a violation of the laws of God, and the dictates of common sense and common decency."[72] While this invocation of traditional stereotypes appears quite conservative on its face, the use of these notions to subvert traditional marriage ideals is actually an unexpectedly radical strategy. **52**

Likewise, temperance advocates' defense of women's rights could be fierce at times: **53**

> What rights have the drunkards [*sic*] wife and children? . . . What right have [men] to make laws which deprive her of every comfort, strips [*sic*] her of every friend, and dooms [*sic*] her to a wretched existence? . . . It is useless for our sex to seek redress at the hands of the law, from the cruel wrongs inflicted upon them, for it will give them none—it does not recognize their right to protection. . . . [I]t is not only the right, but the duty of those trampled upon, to assert their claim to protection.[73]

The discourse of rights found here, while powerful, was rare for temperance activists, and was much more frequently employed by suffragists, whose cause was more obviously linked with rights for women. The notion of women asserting themselves—in fact, being obligated to assert themselves—was equally unconventional within a movement that often used women's supposed meekness to its advantage. Temperance workers' willingness to align themselves with this controversial cause and this heated rhetoric, however occasionally, demonstrates the seriousness, and perhaps even the desperation, with which they approached the issue of women's safety from violent husbands.

Likewise, some temperance activists did not hesitate to express their frustration with the movement's seemingly insurmountable opposition and slow progress. One exasperated temperance worker wrote to the *Lily* that women might be tempted to "warn the dram-sellers . . . not to encroach on our hearth; and if they persisted . . . *burn down* their establishments with [a] clear . . . conscience."[74] Such a comment bears the hallmarks of radical change that are nonetheless couched within some fairly conservative terms. Clearly, this kind of a dramatic call to action certainly helps to underscore the gravity with which temperance activists viewed their cause. At the same time, the female possessiveness of the domestic **54**

arena reflected in this statement ("our hearth") reinforces traditional separate spheres ideology—women are incited to take radical measures, but only if their domain, the domestic realm, is perceived to be threatened.

55 Despite the occasional inflammatory rhetoric offered by temperance activists, neither the movement itself nor its treatment of domestic violence posed a significant threat to the patriarchal family form or to the pervasive ideology of separate spheres. It is certainly true that the movement demonstrated some radical moments, allying itself with controversial causes and employing language designed to shock traditional sensibilities. Overall, however, the more common strategy of the temperance movement was to work within, rather than against, prescribed gender roles and accepted social boundaries—most significantly, the concept of separate spheres. Temperance workers often embraced these notions as a means of increasing the power and legitimacy of their cause (as, for example, when demanding the rights that should naturally accrue to them as the morally superior sex).

56 While this strategy was an effective means of portraying the movement as a moderate and reasonable one, temperance activists' reluctance to reject the separate-spheres model only reinforced traditional notions of privacy. Accepting their confinement to the domestic domain as implied by separate spheres, temperance workers then asserted their interest in controlling that arena by demanding safe and alcohol-free homes. In so doing, they helped to elevate the nuclear-family home as a sacred space, protected from outside influence—just as early notions of privacy had traditionally construed it.

57 Unfortunately, with regard to stopping domestic violence, this strategy was a precarious one, for several reasons. First, anchoring the problem of domestic violence so tightly to the problem of alcohol consumption required that temperance activists be correct in their primary assumption; namely, that banning alcohol would automatically eliminate violence in the home. Second, this strategy also meant that the elimination of domestic violence would *only* happen if the campaign for temperance were successful. As a result of these two factors, the temperance movement, while certainly successful in raising some awareness about domestic violence, was ultimately unable to make significant strides against it. Instead, however inadvertently, the rhetoric and strategies of the movement did serve to reinforce cultural notions of privacy and of the home as an impermeable space.

Domestic Violence and the Women's Rights Movement

58 Although their cause was often linked with the temperance movement, suffragists and women's rights advocates confronted the issue of domestic violence much more directly than did their colleagues working for temperance. For suffragists, the link between winning their goal and ending violence was not as clear as it was for temperance workers; no one would argue that winning the vote would automatically eliminate domestic abuse. Instead, many women's rights advocates talked about ending domestic violence in the same way they talked about the vote:

as a right. Like temperance workers, these activists raised the issue of domestic violence as a means of furthering their overall goal, but they discussed it as part of the larger slate of women's rights that they were seeking.

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And while the temperance movement focused (at least externally) on maintaining safe space for women in their traditional domestic roles, the women's rights movement took a different approach. In fact, the women's rights movement—particularly its more radical factions—publicly acknowledged its more far-reaching agenda of securing rights for women that were previously denied to them. For suffragists, the vote was the most crucial right, for it would help them subsequently to secure other freedoms for women. In an 1892 speech entitled, "The Solitude of Self," Elizabeth Cady Stanton argued passionately along these lines:

> In discussing the rights of woman, we are to consider, first, what belongs to her as an individual, in a world of her own, the arbiter of her own destiny. . . . Her rights under such circumstances are to use all her faculties for her own safety and happiness. . . . [I]f we consider her as a citizen, as a member of a great nation, she must have the same rights as all other members, according to the fundamental principles of our government. . . . To deny political equality is to rob the ostracized of a self-respect; of credit in the market-place; of recompense in the world of work; of a voice in the choice of those who make and administer the law; a choice in the jury before whom they are tried, and in the judge who decides their punishment.[75]

Whereas the rhetoric of the temperance movement (like some of the more conservative branches of the women's rights movement) often relied on cultural ideas about the moral superiority of women, the rights-focused discourse employed by Stanton and her colleagues emphasized the equality of women and men. And this equality, as Stanton's speech reveals, was not limited to voting rights; instead, these women's rights workers sought a much more far-reaching equality that affected the realms of labor, finance, law, politics, and even physical and mental well-being. In this sense, woman suffrage was not an end in itself, but rather an important means of pursuing this broad-based vision of equality.

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Given the movement's focus on equality and the pursuit of equal rights, it is hardly surprising that its writings often called attention to the subjugation of women that activists witnessed in daily life. Often, the most egregious and moving example of this oppression that these writers pointed to was violence against women, particularly in the home. The *Woman's Journal*, published out of Boston in the late nineteenth century, is filled with many of these examples. Edited by Lucy Stone and Henry Blackwell beginning in 1872, the *Woman's Journal* (later renamed *Woman's Journal and Suffrage News*) did not hesitate to publish detailed accounts of domestic violence along with scathing commentaries linking this violence to the overall societal subordination of women. Indeed, even this journal, published by the faction of the women's rights movement considered to be more conservative in its approach to suffrage, employed a

radical and systemic critique of domestic violence. In this way, the approach of the *Woman's Journal* to domestic violence mirrored that of another women's rights journal of the same era, the *Revolution*, published by the more radical Stanton and Anthony.

61 Articles with titles such as "The Subjection of Wives" were not uncommon in the pages of these journals. In her discussion of the horrors of wife-beating, one writer to the *Woman's Journal* asserts, "These horrors result inevitably from the subjection and disfranchisement of women. . . . Equal Rights and Impartial Suffrage are the only radical cure for these barbarities."[76] Lavinia Goodell wrote an article in the same journal entitled "Ownership of Wives," in which she decries "the 'brain starvation' induced by ages of 'subordination' [that] cannot fail to have told on the mental and moral development of women."[77] Another writer, detailing a list of recent incidents of violence against women in the home and denouncing women's lack of legal redress, observes with exasperation, "Yet women are asked to take part in the celebration of their subjugation."[78] Likewise, in an 1860 public speech supporting divorce laws, Stanton described a marriage "where innocent children, trembling with fear . . . hide themselves from the wrath of drunken, brutal fathers . . . as they see the only being on earth they love, dragged about the room by the hair . . . , kicked and pounded, and left half dead and bleeding on the floor?"[79] She continues, "Our law-makers have dug a pit, and the innocent have fallen into it. . . . The mass of the women of this nation know nothing about the laws, yet all their specially barbarous legislation is for woman."[80] Stanton concludes by advocating a new model of marriage based on the concept of equal rights: "[T]here is one kind of marriage that has not been tried, and that is, a contract made by equal parties to live an equal life, with equal restraints and privileges on either side."[81] While this approach was in some ways much more direct than that taken by temperance workers, it had a similar effect. By citing the most heinous and provocative examples of the subordination of women—namely, domestic violence—these writers were able to bolster the case for women's rights overall.

62 These activists were also willing to use (and to exhort others to use) political means as the tools of social change. British feminist Frances Power Cobbe, author of the influential article, "Wife-Torture in England," printed in the *Woman's Journal*, made specific recommendations to Parliament regarding legal recourse for poor women. In this article, she cogently argues that while wealthy women may obtain divorces for their safety, poor women are unable to afford them. In response to this inequity, Cobbe outlines for Parliament a bill that seeks to resolve a number of issues affecting the safety of poor battered women, including orders of protection, child custody, and financial support. The full text of the bill, entitled the Wives' Protection Bill, was reprinted in the *Woman's Journal*.[82] Having gathered the support of "many eminent legal authorities," Cobbe urges readers to support this and similar bills.

63 A different kind of political activism took place in the United States, where American feminists petitioned the governor of Pennsylvania to review the conviction of Hester Vaughn. Vaughn, a domestic servant and victim of domestic violence, had been impregnated by her employer and subsequently fired by him. After giving birth alone, she was found lying with her dead infant next

to her. Convicted of infanticide, Vaughn had been sentenced to death. Upon hearing of her case, these activists wrote and spoke frequently about it in an attempt to generate publicity on Vaughn's behalf. They also visited her in prison, raised money for her, staged a public protest of her sentence, and petitioned the governor for her pardon, which they eventually secured.[83] In the process, they demanded, among many other things, that "in all civil and criminal cases, woman shall be tried by a jury of her peers; shall have a voice in making the law, [and] in electing the judge who pronounces her sentence…"[84] Not content merely to correspond with Governor Geary, a delegation of these activists also visited him in person, demanding an audience with him in order to plead their case.[85] One of these activists, a Mrs. Kirk, also paid a visit to the judge in the case, urging him to consider domestic violence from the woman's perspective.[86] The Vaughn case was an unusually extreme and high-profile example of women's rights activism at this time. Nevertheless, the strategy of direct intervention in political and judicial realms that the Vaughn case represented was in keeping with the women's rights movement's agenda of securing equal rights of participation in these arenas for women.

64 In addition to the myriad of important practical uses presented by access to law and politics, these activists also demonstrated a sophisticated awareness of the symbolic importance of law. Promoting the Wives' Protection Bill, for example, Cobbe suggests that no matter how small the number of women who might take advantage of such a bill, its presence as a possible recourse for battered women would be extremely significant nonetheless. In fact, she suggests, the mere existence of such a law "would act very effectually on the husband as a deterrent to violence."[87]

65 Suffragists and women's rights activists also brought a radical economic analysis to the issue of domestic violence. Cobbe's bill, designed to help battered women secure freedom both financially and physically, is just one example. Likewise, Rhoda Munger, writing for the *Woman's Journal*, characterizes abandonment and forced poverty as a form of violence. Munger recounts the story of a woman in Little Rock who was impregnated and then abandoned to live in poverty by a man who lived in luxurious conditions in the same town. Describing the conditions in which the woman lived (without food, wood for warmth, or medicine), and ultimately died of consumption, Munger describes her abandonment as "cruel and brutal," referring to the father of her child as "her murderer."[88] Drawing these theoretical links between physical and economic violence, women's rights workers pursued a holistic approach to the issue of domestic violence, seeking solutions that were deeply rooted and systemic.

66 Perhaps most significantly, advocates for women's rights engaged in publicity of the issue of domestic violence as a means of combating it. Their writings reveal that they pursued this course both explicitly and implicitly. Calling into question the prevailing "public sentiment," which "sympathizes with the man who has killed his wife 'because he loves her,'"[89] they sought to change public perception by raising awareness about the realities of domestic violence. In so doing, they challenged existing norms that suggested that domestic matters should remain

private at all costs. While these efforts proved to be rather small in scale, they nonetheless reveal an awareness among these activists of the importance of bringing this problem into the public sphere. An activist in Boston, for example, wrote in the *Woman's Journal* that "there seems no better way than to show up these dreadful things in their true colors, and keep them before the people continually and persistently, until they are led to trace out the causes that lead to such terrible results and apply the remedy."[90] Likewise, Cobbe recognized the importance of this strategy when she wrote, "it is indispensable that some specimens of the torture to which I refer should be brought before the reader's eye."[91] While judicial opinions repeatedly expressed a reluctance to "invade the domestic forum" or "raise the curtain" on the abuse—thereby denying legal redress to battered women—women's rights activists recognized that bringing this problem out of the private realm would be a critical first step in addressing it.

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To that end, the *Woman's Journal* promised, in 1876, to publish on a regular basis a list of crimes recently committed against women. This effort was thwarted, however, once the editors realized that the number of such incidents was so great that "to do so would convert the *Woman's Journal* into a mere 'Police Gazette.'"[92] They did, however, publish selective lists of such incidents, culled from a variety of local newspapers and focusing mainly on domestic violence. Often, these lists did read almost as a police blotter, providing names, dates, and details of the incidents, with little or no accompanying comment, as in the following entry: "Decatur, Ill., January 3.—John McEvers, a saloon-keeper at this place, shot his wife through the back of the head with a rifle to-day, the ball coming out in front and tearing away her lower jaw. She is still living but will probably die. McEvers is in jail." The effect of these lists, provided under such headings as "Crimes of a Single Day," was to demonstrate the frequency and the severity of these attacks, in a seemingly objective fashion. In this way, activists attempted to shed light on the sheer magnitude of the problem by destroying the veil of silence and secrecy surrounding it, while leaving little room for argument. While the impact of this strategy was necessarily limited by the small size of the *Woman's Journal*'s audience, this tactic nonetheless reveals a desire on the part of these activists to challenge domestic violence by exposing it to public scrutiny and stripping it of the protection of privacy.

68

Despite its strong rhetoric and often radical strategies, this movement's approach to domestic violence had some conservative elements, as well. Women's rights activists often relied on the same gender stereotypes used by temperance advocates, referring to women as "defenseless"[93] or invoking condescending images of social class differences between victims and activists. In her description of battered wives (by which she is, incredibly, attempting to solicit sympathy for them), Cobbe paints the following picture: "Poor, stupid, ignorant women as most of them are, worn out with life-long drudgery, burdened with all the pangs and cares of many children, poorly fed and poorly clothed . . ."[94] The disdainful-yet-pitying tone of this description seems almost incongruous in the face of the tireless work Cobbe was doing on behalf of economically disadvantaged battered women.[95] Yet contradictions such as these only serve to underscore the complexity of the movement, which resists characterization as solely

and simply radical. Like the temperance movement, the women's rights movement was a multidimensional effort that encompassed the opinions and perspectives of a broad range of activists.

Common Perspectives

In fact, the two movements shared several common elements. The most prominent and probably most significant of these for the issue of domestic violence was their shared critique of the justice system. Throughout the writings of both movements, harsh and pointed criticisms of American law and the American justice system are pervasive. Writing in the *Woman's Journal* about wife-beaters, one activist declared, "Not one in ten of this class of criminals receive their just deserts; nor will they, so long as money, the plea of emotional insanity, and perjury, defeat the ends of justice."[96] A writer in the *Lily* lamented, "The dispensers of justice will condemn the wronged and ruined, while they suffer the oppressor and destroyer to go free."[97] Although adopting a more charitable approach to the law, Cobbe also admits its failings: "the existing law, even worked with the extremest care and kindness, cannot and does not prevent the repetition, year after year, of all the frightful cruelties, beatings, burnings, cloggings, and tramplings. . ."[98] The weaknesses of the existing legal system as a means of protection for battered women, whether due to corruption or just inadequacy, were a source of tremendous dissatisfaction for activists of all kinds working to end domestic violence. **69**

Even more frustrating for these workers was the sense that the legal system failed women because it either deliberately ignored or refused to take seriously the problem of violence in the home. Articles in the *Woman's Journal* and the *Revolution* with such titles as, "Christian England Gives Two Pounds for Whipping Your Wife," expressed outrage over the virtually nonexistent punishments meted out to men who attacked and beat their wives. Judicial wrist-slapping in the form of minimal fines sent a clear message regarding the degree of gravity with which courts approached this problem.[99] Judges', politicians', and society's apparent lack of concern for battered wives in the face of staggering, concrete evidence of the problem's magnitude was equally disheartening to activists. Writing from England, Cobbe quotes judicial statistics of the vast numbers of women "brutally assaulted" in the home, only to lament that "the newspapers go on boasting of elementary education, and Parliament busies itself [with other matters]; but this evil remains untouched!"[100] **70**

Both temperance reformers and women's rights advocates were quick to point out the roots of this apathy toward the problem of domestic violence: the gender bias that was so easily observed in legal and political arenas. A writer to the *Revolution* described the plight of a woman imprisoned for "riotous conduct" for asking her husband for child support after finding him living with another woman. If the situation had been reversed, this writer asserted, "not a court of justice in the land but would have acquitted the outraged husband should he have shot and killed both wife and paramour. Are we to dignify such legal partiality as this by the name of justice?"[101] A temperance worker cynically echoed this complaint: "Such is the consistency of **71**

the law in this land of boasted liberty and equality!"[102] The fact that women were being denied justice solely by virtue of being female outraged activists across ideological lines. When addressing the problem of domestic violence, it was not difficult to see the connection between disregard for women in the courtroom and in the home.

72 The reason for the gender bias in law and government that was most frequently cited by activists was the complete male domination of—and lack of female representation in—these areas. In fact, of all the critiques activists leveled at the political and judicial systems, this issue generally revealed the most cynicism and hostility. "Woman has all the rights she wants, has she? Not while we have men empowered to make such laws as these," one woman wrote in the *Revolution*.[103] Temperance reformers also recognized the perils of this lack of representation: "[Woman] tamely submits to be governed by such laws as man sees fit to make, and in making which she has no voice."[104] While such critiques might suggest a belief in a liberal "add-women-and-stir" solution to this problem, other writers formulated even more radical critiques. One such writer first advises, "Let it be remembered that Man has always legislated for Woman, and does so still. That he is not only her lawgiver, but her judge and juror."[105] She then ultimately links this problem to the prevalence of domestic violence, viewing them together as different manifestations of the root problem, the overall subordination of women.

73 These critiques of the flawed political and judicial systems, shared by both temperance and women's rights workers, represent a significant component of nineteenth century efforts to combat domestic violence. That this range of activists responded so critically and so vehemently to problems within the judicial system suggests both their awareness of its power and their belief in its potential as a source of liberation to battered women.

Comparison and Evaluation of the Two Movements

74 This point of common ground between these two ideologically diverse movements is quite significant, not least because this unified critique laid the groundwork for future battered women's advocates to seek judicial reform. At the same time, the contrasting ways in which the two movements approached a variety of related issues is instructive here. For example, the two groups reacted very differently to the prevailing contemporaneous ideology of separate spheres. Temperance reformers worked within that paradigm very deliberately, relying on traditional notions of women's moral superiority and supposed reign over the domestic sphere as a source of authority and power in the service of achieving their goal. Advocates for women's rights, on the other hand, publicly renounced this division very early in their movement, denouncing men for "assigning [women] a sphere of action," and declaring that "it is time she should move in the enlarged sphere which her great Creator has assigned her"[106]—thereby suggesting that the realm in which women should live encompassed the whole world, given to them by God, and not the tiny sphere assigned to them by men.

In the larger sense, temperance activists were careful, at least outwardly, to avoid any appearance of upsetting the male power structure even as they worked to combat domestic violence. Women's rights advocates' approach to the problem, by contrast, seemed as radical as their other demands—for the vote, for divorce reform, for education and employment rights for women—as each one was a direct assault upon existing male power. Although the public personae of the two movements differed in this way, their goals were often overlapping, as was their membership. With regard to domestic violence, then, it can be said that the two movements ultimately complemented each other. By breaking the taboo around domestic abuse in a "respectable" way, temperance advocates set the stage for their colleagues' more radical-seeming approach to the issues. Likewise, the suffragists' strident demands for women's rights and equality made the temperance advocates' plea for peace in the home seem almost reasonable by comparison. **75**

In very different ways, the two movements began the critical work of loosening the privacy paradigm. Working under the rubric of the anti-drinking crusades, temperance reformers were able to break the silence around the issue of domestic violence and begin to raise public awareness of the problem. Chipping away at this social taboo was a crucial first step in enabling the more overt publicity campaigns that would come later. Women's rights advocates, by publishing detailed lists of atrocities committed against women in their homes, demonstrated an understanding that as long as this problem was perceived as a strictly "private" matter, reform would be impossible. Because of the significant role that privacy played in the issue of domestic violence both judicially and culturally, these activists' work to lift the shroud of privacy that hid these acts of violence was a meaningful endeavor, however limited its effects were in practice. **76**

Additionally, because privacy was so strongly linked to the patriarchal family, undermining this privacy could be construed as attacking the family unit itself. To varying degrees, nineteenth-century activists were in fact doing just that, whether through the women's rights advocates' campaigns for divorce or through temperance reformers' insistence that women had a moral obligation to abandon drunken, violent husbands. These three elements—privacy, domestic violence, and the patriarchal family unit—were intertwined and mutually reinforcing. As a result, attempts to combat domestic violence that failed to disrupt either of the other two elements would thus have a lesser impact upon the problem. **77**

Overall, through its rejection of separate-spheres ideology and its emphasis on helping women to secure independence, the women's rights movement pursued a more aggressive critique of privacy and the patriarchal family. With its overarching focus on procuring safety for women within the traditional domestic domain, the temperance movement presented a much less substantial challenge to either the privacy paradigm or the nuclear family. Interestingly, when courts did begin to repudiate the right of chastisement, they applied the rhetoric of rights and equality, speaking, as the women's rights activists had, of a woman's right not to be beaten.[107] **78**

Nonetheless, both the temperance and the women's rights movements served as crucial mobilizing forces for women in the late nineteenth century and laid the groundwork for women's activism, around domestic violence and a host of other issues, for the coming century.

Domestic Violence Law and Activism in the Early Twentieth Century

79 For a variety of reasons, activism on behalf of battered women did not reach this level again until well into the next century. As several scholars have noted, this decline in activity around domestic violence dovetails with an overall reduction in the more visible types of feminist activism during this era.[108] Having been focused intensely on the fight for suffrage and the battles over fair labor practices during the first two decades of the twentieth century, feminist activism was much less visible in the ensuing years. Of course, several compelling social issues did receive a great deal of attention from feminist activists at this time—most notably, the anti-lynching and birth control movements[109]—to a much greater extent than any efforts on behalf of battered women.

80 Historians have suggested several possible reasons for the decline in battered women's activism at this time. Most obvious is the range of successes that feminists had already begun to achieve, both in courts and in legislatures. During the late nineteenth and early twentieth centuries, numerous laws expanding the scope of women's rights were passed in various states throughout the country. Legislatures began to chip away at the doctrine of marital unity, granting women rights to their own property, wages, and representation before the law.[110] Divorce laws were also liberalized during this time, allowing women to seek divorce on grounds of cruelty. Likewise, by 1910, 35 of the 46 states had passed laws classifying wife beating as assault.[111]

81 Despite these initial advances on both legislative and judicial fronts, however, the early decades of the twentieth century saw very little progressive change in the government's response to domestic violence. As awareness of the problem increased, so did the number of cases brought to court. In response to this growing category of cases, a new development emerged at this time: domestic relations courts. Established because, in the words of one New York City judge, "domestic trouble cases are not criminal in a legal sense," these courts were staffed primarily by social workers.[112] Rather than prosecution, the courts provided services such as counseling for batterers and their wives. The effect of such courts, established in most major cities by the 1920s (and still operating in a modified format in many places today), was "to decriminalize marital violence" and to encourage the preservation of the marriage despite the abuse.[113]

82 At the same time, two related elements were converging: the rise of social work as a profession, and the growing popularity of the psychological and psychiatric fields.[114] As Linda Gordon observes, the professionalization of the social work field in the early twentieth century

led to an increasingly individualized approach to family violence. Seeking legitimacy as a "scientific" field, the social work of this era also deliberately sought to avoid any appearance of the perceived sentimentality about family life that was associated with the nineteenth century.[115]

83 The increasing respect and prominence accorded to Freudian and other psychological models during the 1940s and 1950s reinforced this focus on individual problems, as opposed to systemic change. In particular, such models often promoted ideals of selflessness and sacrifice as the hallmarks of successful female development, for the attainment of these goals presumably fitted women best for the roles of wife and mother.[116] Freudian notions of women as inherently masochistic were also devastating to battered women of this era, as these ideas affected the ways in which service providers, among others, viewed cases of domestic violence, often leading them to trivialize or dismiss the problem.[117]

84 The combination of these factors led to an increase in victim-blaming throughout the middle decades of the twentieth century. Because it was the battered wives who generally sought the aid of social workers and therefore became the "clients," these workers in turn focused their efforts on changing the woman herself. After all, just by virtue of seeking social services, the battered wife was, as Gordon observes, "present and influenceable" in a way that the battering husband was not.[118] While social workers focused on "fixing" battered women, emerging psychological models of their inherent masochism reinforced the notion that the fault for the violence might well lie with the victim.

85 Ironically, the societal gains won by feminists may have contributed to the decrease in public sympathy for battered women.[119] Having secured greater independence via an increasing presence in the paid labor market and increased access to divorce, women were no longer viewed as helpless victims. But at the same time, these changes were still not widely accepted. Paid labor was still seen as a predominantly male domain, and the presence of women (in particular, white and middle-class women) in this arena made many people uncomfortable. Likewise, divorce and remarriage, while more readily available through the courts, were not generally looked upon favorably. Thus, the increased options available to battered women also carried several negative consequences: societal disapproval on the one hand, and decreased sympathy for their plight on the other.[120]

86 During the middle of the twentieth century, the ways in which victims of domestic violence conceptualized their abuse also seems to have shifted. Gordon has observed the changes in the nature of women's complaints to social workers at this time, and has developed an economic hypothesis. During times of economic stability, she observes, in which women could (and did) depend more upon their husbands for economic support, women complained primarily about nonsupport by their husbands, even in cases in which physical abuse was also clearly present. At these times, women were more likely to blame themselves for the violence, because "economic dependence prevented women's formulation of a sense of entitlement to

protection against marital violence, but it also gave them a sense of entitlement to support."[121] Less secure financial times, beginning with the Great Depression, brought more claims of physical violence, even when lack of support was also an issue. This shift, according to Gordon, suggests that economic uncertainty reduced women's expectation of financial support, while their resulting independence actually heightened their sense of entitlement to bodily integrity.[122]

87

Case Resources
Meyer v. *Nebraska*
Findlaw (http://laws.findlaw.com/us/262/390.html) (full text)

At the same time that activism and social concern for the issue of domestic violence were waning, a strong foundation was being laid for the development of privacy rights, in a series of US Supreme Court cases decided throughout the first part of the twentieth century. One of the most significant of these was *Meyer* v. *Nebraska*, a 1923 case that invalidated a Nebraska statute forbidding the teaching of any language other than English to young children. The Court determined that this statute unreasonably restricted the liberty protected by the Fourteenth Amendment. Specifically, the Court interpreted this Fourteenth Amendment liberty to include, among other things, "the right . . . to marry, establish a home and bring up children."[123]

88

Case Resources
Pierce v. *Society of Sisters*
Findlaw (http://laws.findlaw.com/us/268/510.html) (full text)

Just two years later, *Pierce* v. *Society of Sisters* was decided, and became another landmark case in the development of privacy rights. Like *Meyer*, *Pierce* concerned an educational issue. Here, the Oregon Compulsory Education Act, which compelled parents and guardians to send their children to public school, was also challenged as a violation of the Fourteenth Amendment. The Court agreed with this analysis, concluding that the statute interfered unduly with "the liberty of parents and guardians to direct the upbringing and education of children under their control."[124] Building specifically on the *Meyer* opinion, this interpretation of Fourteenth Amendment liberty focused on the freedom of parents to determine the nature of their children's education.

89

Case Resources
Prince v. *Massachusetts*
Findlaw (http://laws.findlaw.com/us/321/158.html) (full text)

Finally, in 1944, *Prince* v. *Massachusetts*, involving child labor and religious freedom, solidified this trend. In *Prince*, the Court considered the case of a guardian who allowed her ward to sell religious magazines, in accordance with her religious beliefs but in violation of a Massachusetts statute that restricted children from selling periodicals on public streets. Within the opinion, the

Court referred specifically to *Meyer* and *Pierce*, characterizing them boldly and broadly: "[T]hese decisions have respected the private realm of family life which the state cannot enter."[125]

Case Resources
Paris Adult Theatre I v. *Slaton*
Findlaw (http://laws.findlaw.com/us/413/49.html) (full text)
Oyez (http://www.oyez.org/cases/case/?case=1970-1979/1972/1972_71_1051) (oral arguments)

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Interestingly, the *Prince* opinion went on to uphold the statute, finding it to be no violation of the Fourteenth Amendment and concluding that "the family itself is not beyond regulation in the public interest."[126] Yet when subsequent cases sought to further establish privacy rights, such as *Paris Adult Theatre I* v. *Slaton*—which described a "privacy right [that] encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing"[127]—they found the roots of this privacy right in *Prince*, *Pierce*, and *Meyer*.

91

For a wide variety of reasons, public sympathy for the issue of domestic violence and activism on behalf of battered women were at much lower levels in the first half of the twentieth century than they had been in the latter part of the previous century. During this same period of time, the basis for the right to privacy was slowly but steadily being developed in the courts. By the time the battered women's movement began to coalesce in the early 1970s, therefore, the judicial stage was set for some difficult legal confrontations based on the issue of privacy in the home. Bolstered further by the recent developments in reproductive rights jurisprudence, the privacy that had developed quietly over the past few decades would be a significant challenge for battered women's advocates to face.

Conclusion

92

The privacy that has historically shaped the issue of domestic violence has often been more of a vague, cultural term than a specifically political or legal one. Yet in the nineteenth century, social and judicial ideas about the importance of privacy held tremendous sway over the fates of battered women, both at home and in court. The right of chastisement that was debated in courts throughout the nineteenth century obviously played a significant role in these cases. Yet the centrality given to this question in many judicial opinions of this era was often negated by considerations of privacy, which frequently determined what the real outcome of the case would be. The race, class, and immigrant status of victims and offenders often proved to be mitigating factors in these cases as well, as the willingness of police and judges to punish batterers often appeared to depend as much on their own biases about African Americans, immigrants, or the poor as on the actual facts of the case. Community response to domestic violence was also

affected by judicial treatment of the issue. Often, local groups' sense of responsibility to protect victims and punish batterers reflected their perceptions about the extent to which the state was performing these functions.

93 On the national scale, activism on behalf of battered women (and against their abusers) happened largely within the context of other social movements. The most prominent of these were the temperance reform effort and the women's rights movement. As some feminist historians have observed, some general ideological differences between these movements existed. Nonetheless, with regard to domestic violence, both movements exhibit a complex mixture of rhetoric and strategies that often resists generalization. In fact, at several points, the agendas of the two movements seem to overlap. Two of the most significant points of overlap involve their pervasive critique of the American justice system, particularly in its treatment of battered women, and the use of publicity as a strategy for combating domestic violence. Publicizing the problem of domestic violence, an explicit strategy of women's rights advocates (and, less explicitly, of temperance workers), was a first step in weakening the privacy paradigm that had kept battered women from finding justice in the legal system.

94 Despite these initial efforts of the late-nineteenth-century activists, the first half of the twentieth century was a quiet time for anti-domestic-violence activism. The feminist energy that had been focused on suffrage and other battles for equal rights subsided greatly in the ensuing decades. Several factors, including the professionalization of social work and the increasing popularity of particular psychological theories, contributed to a culture of victim-blaming in the arena of domestic violence. Recent gains in gender equality (such as winning suffrage and an increased presence in the paid labor force) may have actually contributed to this problem, causing a decrease in public sympathy for battered women. At the same time, while activism and public understanding of the problem languished, a constitutional right to privacy was being developed in the courts in a variety of cases unrelated to domestic abuse. While these cases initially spoke only vaguely of parental rights as part of the liberty implied in the Fourteenth Amendment, the opinions were gradually used to establish a right of privacy protecting the home from state interference.

95 The right of privacy that began to take legal shape in these cases would eventually be a jurisprudential lifeline for activists working to secure reproductive rights. After decades of frustration with courts and legislatures, birth control and abortion advocates were finally able to succeed in securing these rights for women by convincing courts that these decisions fell under the rubric of privacy rights and therefore should not be disturbed by the state. Just as reproductive rights workers were winning these victories in court, the battered women's movement was gaining momentum. For these activists, the consequences of privacy rights would be much less felicitous. The paradox that this issue presented for feminist activists—several of whom were working in both movements at the same time—will be explored in the next chapter.

Notes

Note 1: In fact, nineteenth-century courts used the term "chastisement" to refer to wife-beating. This terminology reflected William Blackstone's description of a man's means of disciplining a wife, child, or servant for whose actions he was legally responsible. William Blackstone, *Commentaries on the Laws of England* v.1 (Oxford: Clarendon Press, 1765): 430.

Note 2: For a more detailed discussion of various state laws passed against chastisement, see Elizabeth Hafkin Pleck, "Wife Beating in Nineteenth-Century America," *Victimology* 4, v. 1 (1979): 60–61.

Note 3: Elizabeth Hafkin Pleck, "Wife Beating in Nineteenth-Century America," *Victimology* 4, v. 1 (1979): 67–71.

Note 4: Ibid., 71.

Note 5: Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Viking, 1988): 271–74.

Note 6: For more information on coverture and the marital unity doctrine, see William Blackstone *Commentaries on the Laws of England* vol. 1 (Oxford: Clarendon Press, 1765): 430–33 and James Kent, *Commentaries on American Law* vol. 2 (New York: O. Halstead, 1827): 109.

Note 7: William Blackstone, *Commentaries on the Laws of England* v.1 (Oxford: Clarendon Press, 1765): 430.

Note 8: James Kent, *Commentaries on American Law* vol. 2 (New York: O. Halstead, 1827): 180.

Note 9: *Bradley* v. *State*, 1 Miss. (1 Walker) 158 (1824). While phrases such as "moderate," "great emergency," and "salutary" suggest that the court is not necessarily willing to disregard *all* acts of chastisement, the opinion nonetheless condones quite clearly the corporal punishment of wives by their husbands.

Note 10: *State* v. *Black*, 60 N.C. (Win.) 268 (1864).

Note 11: *State* v. *Rhodes*, 61 N.C. (Phil. Law) 453 (1868). For another, similar example, see also *State* v. *Oliver*, 70 N.C. 60 (1874).

Note 12: Ibid., 454.

Note 13: For further discussion of this era, see Angela Davis, *Women, Race, and Class* (New York: Vintage Press, 1983): Ch. 5.

Note 14: Beth Richie, "Battered Black Women: A Challenge for the Black Community," in *Words of Fire*, ed. Beverly Guy-Sheftall (New York: New Press, 1995): 398–99. For more on this issue, see Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (London: Routledge, 1990): 187; Barbara Omolade, *The Rising Song of African-American Women* (New York: Routledge, 1994): 89.

Note 15: See Angela Davis, *Women, Race, and Class* (New York: Vintage Press, 1983): Chapters 1, 5, and 6.

Note 16: *Savannah Colored Tribune,* April 22, 1876, quoted in Elizabeth Hafkin Pleck, "Wife Beating in Nineteenth-Century America," *Victimology* 4, v. 1 (1979): 65–66. In a similar vein, Pleck also cites the *Richmond Planet*, which implored black women to "Stay out of the Police court with your petty quarrels," (April 9, 1890, quoted ibid., 65).

Note 17: Elizabeth Hafkin Pleck, "Wife Beating in Nineteenth-Century America," *Victimology* 4, v. 1 (1979): 65.

Note 18: Ibid.

Note 19: Elizabeth Hafkin Pleck, "Criminal Approaches to Family Violence, 1640–1980," in *Family Violence*, ed. Lloyd Ohlin and Michael Tonry, 16–39 (Chicago: University of Chicago, 1989). For further examples of this sentiment, see Reva B. Siegel, "The Rule of Love: Wife Beating as Prerogative and Privacy," *Yale Law Journal* 105 (1996): 2138–39.

Note 20: Reva B. Siegel, "The Rule of Love: Wife Beating as Prerogative and Privacy," *Yale Law Journal* 105 (1996): 2135–36; Sandra F. VanBurkleo, *"Belonging to the World:" Women's Rights and American Constitutional Culture* (New York: Oxford University Press, 2001): 77–78.

Note 21: *Fulgham* v. *State*, 46 Ala. 143 (1871), 146.

Note 22: *Harris* v. *State*, 14 So. 266 (Miss. 1894), 266.

Note 23: Reva B. Siegel, "The Rule of Love: Wife Beating as Prerogative and Privacy," *Yale Law Journal* 105 (1996): 2135.

Note 24: See Barbara Welter, "The Cult of True Womanhood," *American Quarterly* 18 (1966): 151.

Note 25: See Laurie Keiser, "The Black Madonna: Notions of True Womanhood from Jacobs to Hurston," *South Atlantic Review* 60 (January 1995): 97–109.

Note 26: *Knight* v. *Knight*, 31 Iowa 451 (1871), 455.

Note 27: Ibid., 458.

Note 28: *Poor* v. *Poor*, 8 N.H. 307 (1836), 313.

Note 29: Ibid., 308.

Note 30: Ibid., 311.

Note 31: Ibid., 312. It is interesting to note that while the court acknowledged the husbands behavior as a "wrong," it apparently saw the behavior as justified in light of the wife's actions.

Note 32: Ibid., 319.

Note 33: Ibid., 312; emphasis in orginal.

Note 34: *Joyner* v. *Joyner*, 59 N.C. 322 (1862): 325.

Note 35: See, for example, *Shackett* v. *Shackett*, 49 Vt. 195 (1876).

Note 36: Ibid., 325.

Note 37: *Richards* v. *Richards*, 1 Grant (PA) 389 (1857), 393.

Note 38: *State* v. *Rhodes*, 61 N.C. (Phil. Law) 453 (1868), 457.

Note 39: *People* v. *Mercein*, 3 Hill (N.Y.) 399 (1842), 420.

Note 40: *Joyner*, 325.

Note 41: *Commonwealth* v. *Wood*, 97 Mass. 225 (1867), 229.

Note 42: *State* v. *Buckley*, 2 Del. 552 (1838), 552.

Note 43: *Mercein*, 3 Hill (N.Y.) 399 (1842), 410.

Note 44: *Richards*, 392–93.

Note 45: *Commonwealth* v. *McAfee*, 108 Mass. 458 (1871), 461.

Note 46: *Fulgham*, 147.

Note 47: *Knight* v. *Knight*, 31 Iowa 451 (1871), 459, 460; original emphasis.

Note 48: Reva B. Siegel, "The Rule of Love: Wife Beating as Prerogative and Privacy," *Yale Law Journal* 105 (1996): 2125.

Note 49: Elizabeth Hafkin Pleck, "Wife Beating in Nineteenth-Century America," *Victimology* 4, v. 1 (1979): 71.

Note 50: Ibid., 67–71.

Note 51: Elizabeth Hafkin Pleck, "Feminist Responses to 'Crimes Against Women,' 1868–1896," *Signs* 8 (1983): 465. This society also protected rape victims, and was utterly unique in its time for its provision of services to abused adult women in addition to children.

Note 52: Steven Buechler, *Women's Movements in the United States* (New Brunswick: Rutgers University Press, 1990).

Note 53: Ibid., 46–48.

Note 54: Ibid., 48–51.

Note 55: Ellen Carol DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848–1869* (Cornell: Ithaca University Press, 1978): 190.

Note 56: Ibid., 162–200; Steven Buechler, *Women's Movements in the United States* (New Brunswick: Rutgers University Press, 1990): 48–51.

Note 57: Steven Buechler, *Women's Movements in the United States* (New Brunswick: Rutgers University Press, 1990): 50.

Note 58: Ibid., 51.

Note 59: Ibid., 53–61; Aileen S. Kraditor, *The Ideas of the Woman Suffrage Movement, 1890–1920* (New York: Columbia University Press, 1965).

Note 60: Elizabeth Hafkin Pleck, "Feminist Responses to 'Crimes Against Women,' 1868–1896," *Signs* 8 (1983): 459.

Note 61: Ellen Carol DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848–1869* (Cornell: Ithaca University Press, 1978): 104.

Note 62: Jed Dannenbaum, in "The Origins of Temperance Activism and Militancy Among American Women," *Journal of Social History* 15 v.2 (1981): 235–52, presents an interesting discussion of the more militant aspects of the temperance movement.

Note 63: See, for example, Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* (New York: Oxford UP, 1987):49–66, and Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Viking, 1988): 250–57.

Note 64: For more details on separate spheres, see Ellen Carol DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848–1869* (Cornell: Ithaca University Press, 1978): 16.

Note 65: Steven Buechler, *Women's Movements in the United States* (New Brunswick: Rutgers University Press, 1990): 52.

Note 66: Ruth Bordin, *Woman and Temperance: The Quest for Power and Liberty, 1873–1900* (Philadelphia: Temple University Press, 1981): xviii.

Note 67: Unknown author, "Feminine Suffrage," *Lily* (December 1, 1851): 90–91.

Note 68: Cora Leslie, "A Chapter on Young Men," *Lily* (April 1849): n. pg.; original emphasis.

Note 69: Steven Buechler, *Women's Movements in the United States* (New Brunswick: Rutgers University Press, 1990): 52.

Note 70: Unknown author, "Feminine Suffrage," *Lily* (December 1, 1851): 90–91. This article, written in support of woman suffrage, provides an example of the way in which the goals of the temperance and suffrage movements often converged, despite some of the differences between them.

Note 71: Ibid., 90.

Note 72: Mrs. Swisshelm, "Plain Talk," *Lily* (June 1, 1849): n. pg.

Note 73: Unknown author, "Woman's Rights," *Lily* (October 1, 1849): n. pg.

Note 74: Mrs. Swisshelm, "Plain Talk," *Lily* (June 1, 1849): n. pg.; original emphasis.

Note 75: Elizabeth Cady Stanton, "The Solitude of Self," *Woman's Journal* (January 23, 1892): n. pg.

Note 76: Unknown author, "Crimes Against Women," *Woman's Journal* (January 15, 1876): n. pg.

Note 77: Lavinia Goodell, "Ownership of Wives," *Woman's Journal* (October 28, 1876): 349.

Note 78: Unknown author, "Centennial Crimes Against Women," *Woman's Journal* (June 17, 1876): 199.

Note 79: Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, eds., *History of Woman Suffrage: 1848–1868*, vol. 1 (Salem, NH: Ayer Company, 1881): 719.

Note 80: Ibid., 720–21.

Note 81: Ibid., 722.

Note 82: Frances Power Cobbe, "Wife-Torture in England," *Woman's Journal* (June 1, 1878): 174–77.

Note 83: Unknown author, "The Case of Hester Vaughan," *Revolution* (December 10, 1868): 357; Elizabeth Cady Stanton, "Governor Geary and Hester Vaughan," *Revolution* (December 10, 1868): 353–55.

Note 84: Unknown author, "The Case of Hester Vaughan," *Revolution* (December 10, 1868): 357.

Note 85: Elizabeth Cady Stanton, "Governor Geary and Hester Vaughan," *Revolution* (December 10, 1868a): 353–55.

Note 86: Unknown author, "The Case of Hester Vaughan," *Revolution* (December 10, 1868): 357.

Note 87: Frances Power Cobbe, "Wife-Torture in England," *Woman's Journal* (June 1, 1878): 175. Indeed, this awareness of law as a tool to influence cultural values and social mores has been observed by twentieth-century legal scholars, as well. See, for example, Sean E. Brotherson and Jeffrey B. Teichert, who assert that "The symbolic power of the law in transmitting meaning about such key social concerns as 'family life and ethics' thus lends it great influence in shaping fundamental values. We therefore ought to consider carefully what the law symbolically communicates about who we are, what we value, and how we ought to conduct ourselves in our relationships and within society." "Value of the Law in Shaping Social Perspectives on Marriage," *Journal of Law and Family Studies* 3 (2001): 29.

Note 88: Rhoda Munger, "A Woman's Wrongs in Arkansas," *Woman's Journal* (August 31, 1878): 280.

Note 89: Unknown author, "Wife-Killing From Affection," *Woman's Journal* (April 20, 1878): 126.

Note 90: Unknown author, "Crimes Against Women," *Woman's Journal* (January 15, 1876): n. pg.

Note 91: Frances Power Cobbe, "Wife-Torture in England," *Woman's Journal* (June 1, 1878): 174.

Note 92: Unknown author, "Crimes of a Single Day," *Woman's Journal* (January 29, 1876): 34.

Note 93: Ibid., 34.

Note 94: Frances Power Cobbe, "Wife-Torture in England," *Woman's Journal* (June 1, 1878): 176.

Note 95: Nonetheless, it is possible that even the derogatory terms employed here are simply meant to underscore the extent of victimhood experienced by battered women who were also poor, thus representing a deliberate strategy on Cobbe's part. I suspect, however, that these terms instead reflect the perceived class discrepancy between the women working publicly to end domestic violence and the women suffering privately from it.

Note 96: Unknown author, "Crimes Against Women," *Woman's Journal* (January 15, 1876): n. pg.

Note 97: Unknown author, "The Rathbun Tragedy," *Lily* (September 1, 1849): n. pg.

Note 98: Frances Power Cobbe, "Wife-Torture in England," *Woman's Journal* (June 1, 1878): 176.

Note 99: Unknown author, "Christian England Gives Two Pounds for Whipping Your Wife," *Revolution* (August 6, 1868): 71. See also "Crimes Against Women," *Woman's Journal* (August 1878: 280), detailing a similar case in the U.S.

Note 100: Frances Power Cobbe, "Wife-Torture in England," *Woman's Journal* (June 1, 1878): 176.

Note 101: Unknown author, "The Case of Hester Vaughan," *Revolution* (December 10, 1868): 358.

Note 102: Mrs. Swisshelm, "Plain Talk," *Lily* (June 1, 1849): n. pg.

Note 103: Unknown author, "The Case of Hester Vaughan," *Revolution* (December 10, 1868): 358.

Note 104: Unknown author, "Woman's Rights," *Lily* (October 1, 1849): n. pg.

Note 105: Lavinia Goodell, "Ownership of Wives," *Woman's Journal* (October 28, 1876): 348–49.

Note 106: "Declaration of Rights and Sentiments," Seneca Falls, 1848.

Note 107: See, for example, *Fulgham*, acknowledging that women are "entitled to the same protection of the law" (1871: 147).

Note 108: Elizabeth Hafkin Pleck, "Wife Beating in Nineteenth-Century America," *Victimology* 4, no. 1 (1979); Elizabeth Hafkin Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987); Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Viking, 1988).

Note 109: See, for example, Angela Davis, *Women, Race and Class* (New York: Vintage, 1983) and Leslie Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States*, *1867–1973* (Berkeley: University of California Press, 1997).

Note 110: See, for example, Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982) and Joan Hoff, *Law, Gender, and Injustice: A Legal History of U.S. Women* (New York: New York University Press, 1991).

Note 111: Robert T. Sigler, *Domestic Violence in Context* (Lexington, MA: Lexington Books, 1989): 9.

Note 112: Reva B. Siegel, "The Rule of Love: Wife Beating as Prerogative and Privacy," *Yale Law Journal* 105 (1996): 2168.

Note 113: Ibid., 2168.

Note 114: Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Viking, 1988): 61; Elizabeth Hafkin Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987).

Note 115: Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Viking, 1988): 61–62.

Note 116: Ibid., 281–85.

Note 117: Ibid., 284.

Note 118: Ibid., 281.

Note 119: Ibid., 283.

Note 120: Ibid., 282–83.

Note 121: Ibid., 260.

Note 122: Ibid., 260.

Note 123: *Meyer* v. *Nebraska*, 262 U.S. 390 (1923), 399. The implication here is that parents have the right to bring up children as they choose.

Note 124: *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925), 534–35.

Note 125: *Prince* v. *Massachusetts*, 321 U.S. 158 (1944), 166.

Note 126: Ibid., 167.

Note 127: *Paris Adult Theatre I* v. *Slaton*, 413 U.S. 49 (1973), 65.

