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*S. Missari & C. Zozula / Societies Without Borders 7:1 (2012) 52-73*

## **'Woman As...': Personhood, Rights and The Case of Domestic Violence**

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### **Abstract**

This article uses the first domestic violence case filed against the United States in the Inter-American Commission on Human Rights (IACHR) to discuss the politics of gender and domestic violence. We discuss how gender-neutral frameworks of the case in the U.S. ignore the interpersonal gender and power issues which often attend domestic violence cases. The case before the IACHR was arguably more successful in addressing gender by drawing from the human rights literature on women's rights. However, given that this case is the first human rights charge against the United States by a domestic violence survivor, the specifically gendered framework and unique nature of the crime could be potentially limiting for other domestic violence cases. We conclude by offering an alternative framework for domestic violence intervention in human rights cases.

### **Key Words**

Domestic Violence, Women's Rights, Feminist Theory, United States

By all accounts, Jessica Gonzales followed the correct protocol in alerting law enforcement when she feared for her daughters' safety. Jessica obtained a restraining order to protect herself and her three daughters from her estranged husband Simon, who had been acting erratically since their separation. On June 22, 1999, Simon picked up the girls at 5:15pm, and she was subsequently unable to reach him throughout the night. Jessica called the police four times and went to the police station in person at 12:40am. The dispatchers repeatedly told her that Simon had not violated the restraining order despite her fears that her daughters were in danger, because he had legal visitation rights to the children. One dispatcher went so far as to say 'that's a little ridiculous making us freak out and thinking the kids are gone' (*Lenahan v. United States* 2010:19). At 3:20am, Simon pulled up to the Castle Rock, Colorado Police Station and opened fire. He was killed in the shootout and officers found the

~52~

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bodies of Leslie, Katheryn, and Rebecca Gonzales shot to death in the back of Simon's truck (Lenahan v. United States 2010).

Following her daughters' murders, Jessica Gonzales (now Jessica Lenahan) sued the town of Castle Rock, the police department, and three individual officers for failure to adequately enforce her restraining order. Both the U.S. District Court of Colorado and the U.S. Supreme Court argued that the Castle Rock Police Department and the town of Colorado had exercised due diligence in response to the information Gonzales provided that night and, therefore, had no reason to believe that Simon was a threat to his children. Following these two cases, Gonzales, along with the American Civil Liberties Union and the Human Rights Clinic, brought a petition to the Inter-American Commission on Human Rights (henceforth IACHR), making it the first individual complaint of a human rights violation against the United States by a domestic violence survivor (Lenahan v. United States 2010).

Calling the *Gonzales* case 'the first human rights case by a survivor of domestic violence,' invokes a specific image of the 'survivor.' Arlene Roberts of *The Huffington Post* (2009) describes the familiar domestic violence narrative:

The unfortunate saga has played out one too many times. A young woman, fearing for her life at the hands of a spouse or live-in companion, seeks protection from law enforcement officials by obtaining an order of protection. However, the restraining order is not enforced and those intended for protection meet with a tragic end.

This is a story about a specific gendered victim who 'met a tragic end:' a woman experiencing physical, emotional, sexual, and/or economic abuse and control by her intimate partner.

Statistics consistently show that abuse is a common experience for American women (NISVS 2010; Tjaden and Thoennes 2000). Caroline Bettinger-Lopez, Deputy Director of the Columbia Law Clinic, adds that the 'Jessica Gonzales' tragedy is by no means unique' (2008:187). However, due to the extreme nature of this case, one could also maintain that it is, in fact, not 'typical.' We argue that

~53~

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using the *Gonzales* case as a potential model for human rights may limit future national and international response to domestic violence claims because it is not representative of the majority of women's experiences of battering in the United States. Additionally, this case and its framework follow the historical framing of domestic violence claims making legitimated by a woman's status in the family.

In the United States, women are thought to have rights that are no different from men. Women can make justice claims before the law, which is assumed to be impartial and unbiased. However, history has shown how women have been excluded from accessing certain rights. Human rights activists have fought to distinguish women's rights as a specific kind of human rights through the creation of the Committee to End Discrimination Against Women (CEDAW) and United Nations-sponsored conferences in Vienna, Cairo, and Beijing. Women have human rights, but those rights are gendered (Merry 2006). The *Gonzales* cases in domestic courts and the IACHR illustrate these different understandings of women and rights. In U.S. courts, the main issue at hand was not violence against women per se, but, rather, the gender-neutral relationship of the private citizen to the state. The case at the IACHR focused on *Gonzales*' status as a mother and her right to protect her children (*Lenahan v. United States* 2010). That is, the case before the IACHR conceptualized womanhood in a specific way and subsequent discussions privileged the relationship between women and the family and women and children. This article uses the *Gonzales* case as an entrée into discussions of the United States' and human rights frameworks of domestic violence through gendered or gender-neutral claims.

We begin with a review of shared critiques of liberalism and 'moral personhood' by Western feminist scholars and feminist scholars of human rights. These scholars argue that seemingly gender-neutral assumptions underlie political doctrines and social resources, and that these assumptions prevent the full realization of women's rights. We then examine human rights advocates' proposals of a gendered notion of rights and personhood, as a corrective to the gender-neutral frameworks which limit women's access to resources. We conclude by examining the potential limits of both frameworks, and call for reconfiguration of gendered personhood in the United States and question the utility of such an atypical domestic violence

~54~

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case in the IACHR. We argue that conceptualizing human rights discourses and the law as cultural products that can shift and change – rather than unmoving and stable entities – allows for a more agentic understanding of how women and organizations can deploy rights frameworks in order to make positive social change (Merry 2006).

#### DOMESTIC VIOLENCE AS A HUMAN RIGHTS VIOLATION: THE GONZALES CASE

‘Women’s’ issues such as rape in war, human trafficking, and female genital cutting are widely considered human rights violations and are the subject of many human rights campaigns. Domestic violence, however, has not reached the threshold of a human rights violation despite its prevalence among women globally (MacKinnon 2006). In the United States, domestic violence is largely conceptualized as an act of violence perpetrated by an individual, rather than the state or state actors, thus not reaching the standard of a human rights violation (Merry 2006).

Jessica Gonzales fought this standard and filed suit against the town of Castle Rock, Colorado, the Castle Rock Police Department, and the three individual officers that she had spoken to throughout the night of her daughters’ disappearance for failure to enforce her restraining and violation of her due process rights. The case was dismissed and on appeal, the 10th Circuit Court, sitting en banc, found subsequent evidence for a procedural due process claim and but affirmed the District Court of Colorado, that the individual officers could not be held liable for her daughters’ deaths (Castle Rock v. Gonzales 2005). When the case reached the Supreme Court, the 10th Circuit Court’s opinion was reversed. As evidenced by the opinions of the lower and Supreme Courts, the state cannot be held liable for a violent act committed against an individual (Castle Rock v. Gonzales 2005).

Despite the conceptualization of violence against women as an individual problem rather than a cultural one in the United States, the statistics paint a different picture. The United States has among the highest rates in the industrial world for rape, domestic violence, and spousal murder. Between 25 to 50 percent of all women over the age of 18 will experience domestic violence at some point during their lives (Tjaden and Thoennes 2000). Of all the women murdered in the

~55~

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United States, 40 to 50 percent of them were killed by a husband or boyfriend (Campbell et al. 2003). Despite these staggering numbers, the United States is rarely discussed as a state that needs human rights intervention (Armaline, Glasberg and Purkayastha 2011). Part of the reason why the United States and its' citizens may fail to conceptualize domestic violence as a human rights violation may be due to the privileging of gender-neutral discourses over discussions that foreground gendered inequalities as connected to violence against women.

In the last twenty years, however, domestic violence has become one of the key organizing issues around which activists and scholars rally that women's rights are human rights (Bunch 1990). This issue specifically indexes the key critiques of liberalism, as domestic violence is often considered private and individual rather than systemic and group-based. Human rights activist Charlotte Bunch demonstrates this viewpoint, arguing that:

Significant numbers of the world's population are routinely subject to torture, starvation, terrorism, humiliation, mutilation, and even murder simply because they are female. Crimes such as these against any group other than women would be recognized as a civil and political emergency as well as a gross violation of the victims' humanity. Yet, despite a clear record of deaths and demonstrable abuse, women's rights are not commonly classified as human rights (1990:486).

Bunch also notes that no matter women's differences by race, class, sexuality, age, or ablebodiedness, violence is a common experience of women throughout the world, constituting a grave violation of their human rights to life and liberty (1990:489). Following the lead of their non-Western counterparts, scholars in the United States have begun to theorize about the utility of the current frameworks for domestic violence intervention (Stark 2007; Libal and Parekh 2009). For example, Evan Stark (2007) critiques the prevailing 'protect and punish' model of domestic violence intervention for its lack of attention to structural causes of widespread violence against women.

~56~

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He argues that domestic violence can be molded to fit the dominant liberal notion of personhood by focusing on the ways in which systematic violence against women restricts women's access to the rights and resources of citizens. However, the only legislation to directly address the structural underpinnings of domestic violence against women – CEDAW – continues to flounder in Congress. The individual-level approach utilized in the Violence Against Women Act (VAWA) remains the only mechanism of civil redress for battered women in the United States.

*Liberalism: Feminist and Human Rights Critiques*

Liberalism is the political philosophy which underlies many modern democracies. According to liberalism, a person is conceptualized as bound, autonomous, and self-determining. The relationship between the state and the individual is characterized by a social contract in which the individual allows the state particular rights and thus the state is granted power over individuals through the social contract. The liberal individual is a contentious assumption. Feminist and human rights scholars argue that politically liberal assumptions of personhood exclude marginalized people, as individuals or as groups, from accessing rights. These critiques of liberalism are shared by Western feminist scholars across many disciplines as well as scholars in the human rights literature. Western feminists highlight the masculinist, raced and classed underpinnings of the liberal person (Crenshaw 1991; Fraser 1989; hooks 2000; MacKinnon 2006; Roberts 1997). Human rights scholarship points to the liberal person as a Western construct embodied in human rights discourse which privileges a particular notion of personhood and favors some rights over others (Pateman 1988; Pollis and Schwab; MacKinnon 2006; Stark 2007; Nussbaum 1999; Binion 1995; Jaggar 1983). Many of these shared critiques center around concerns that an individual may not identify themselves as an autonomous entity, appeals to rights may be based on group membership not on a relationship to the state, and that some rights that people seek are group rights rather than individual rights (Bulbeck 1998; Cowan, Dembour and Wilson 2001; Gedalof 1999; Merry 2006).

~57~

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### *Law and the United States*

For scholars of legal issues in the United States, the liberal framework is problematic as it is inherently masculine. Feminist scholars argue that the liberal distinction between the public and private in U.S. law is one of the key ways in which the state ignores women's rights. Fraser (1989) calls the modern state a 'public patriarchy' whereby women can only claim rights when they enter the public sphere, from which they have historically been excluded. However, the ways in which women routinely interact with the state and state-run institutions forms a second-tiered and disadvantaged system of subjecthood: women are conceptualized as dependent and not as 'rights bearing beneficiaries ...[and] possessive individuals' (Fraser 1989:153). This separation of public and private, many argue, is what allows law enforcement to disregard women's rights by dismissing or policing them. Until recently, police officers would not respond the same way to domestic violence as other types of assault because it was considered a 'private family matter' (Sack 2004; Binion 1995; Peter 2006). Rape has also been conceptualized as a private act, out of the purview of state responsibility, which invites pathologizing, victim-blaming rhetoric, and individual-level explanations in lieu of structural analyses and solutions (MacKinnon 1989).

When women do enter the criminal justice system, they are often treated differently because of gendered understandings about domestic life. Chesney-Lind and Pasko (2004) find that young women are more likely to encounter the criminal justice system for crimes such as running away, and are often treated more 'lenient' sentences such as house arrest. This is a flawed approach as many of these 'run-aways' leave home because of violence or abuse, and are then punished with a return to an abusive home life.

### *Identity and Agency*

Liberalism assumes a bounded, static, and rational subject, which many feminists argue is problematically masculine. They argue that women have different relationships which form their identity and agency in different ways than men. Some early psychological work (Chodorow 1978; Gilligan 1982) argues that women's identities are other-oriented and are less bound and individualistic than men's

~58~

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identity. Sex-difference theorists (Irigaray 1985, 1992) argue that women biologically and culturally share the universal qualities of the feminine: the fluid, leaky, nurturing, etc. The liberal assumptions of personhood as autonomous, bounded, and rational, then, do not match up to women's identities which are much more communal and other-oriented.

The work of feminist psychologists and sex difference theorists has been heavily critiqued by those who argue that identity and agency are formed in relationship to social structure. Collins (1990) argues that black women have a history of patriarchy and orientation to the community rather than to an individual. Racialized and classed positions create structural inequalities that constrain some women's ability to act effectively in political and social spheres that privilege white and upper-middle class persons (hooks 2000; Roberts 1997; Crenshaw 1991). These scholars agree that assumptions of bounded and rational individuals in social and political thought marginalize women, though they argue that non-white and lower class women are at a greater disadvantage, and that the root cause of the marginalization is structural rather than something essential (either biological or psychological about womanhood).

Gedolf (1999) argues that assumptions of the autonomous bounded individual are not the best framework to analyze rights, rights claims, or identity. This is not to enforce an essentialized notion of women as less rational nor a perspective of sex difference as women being organically more fluid than men. Instead, Gedolf advocates for a contextualized and structural understanding of women's identity and positionality (1999). In the same vein, cultural feminists argue that we must attend to the 'situated-ness' of women within culture and structure in order to understand how women's identities are formed. These scholars argue that the human rights discourse fails to capture the rights of groups or the experience of the individual that cannot be divorced from group positioning. These critics argue that the prevailing human rights doctrine staunchly subscribes to the notion that autonomous individuals are the possessors of rights, rather than individuals with fluid identities and multiple ties, or groups of people.

There are obvious linkages between the gendered critiques of human rights and the critiques of human rights by non-Western

~59~

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scholars. The critiques include the privileging of civil and political rights over social cultural and economic, assuming the existence of particular political structures, and conceptualizing personhood, agency, and identity in Western ways (see Brems 1997 for a review on feminist and cultural critiques of human rights). Non-Western feminists argue that women are not bounded individuals; that agency and identity are more fluid and porous, and human rights frameworks fail to capture the relational qualities of personhood (Bulbeck 1998; Gedalof 1999). The separation between public and private is not only seen as privileging men's access to human rights instruments and enforcement. It also imposes a Western framework onto states, communities, and cultures that do not define personhood as an autonomous, bounded individual (Pateman 1988; MacKinnon 2006; Stark 2007; Nussbaum 1999; Binion 1995; Jaggard 1983).

These notions of what constitutes an individual and who may have rights and who does not, are intensely debated between advocates of cultural relativists and universalist approaches to human rights issues. If human rights are indeed universal, then that allows for the authors and enforcers of those rights to privilege some rights over others. The debates between cultural relativism and universalism have been cast in very stark terms, and those social scientists who stand resolutely on one side or another have been critiqued by feminists who argue that there is certainly a more nuanced and coherent way to look at the relationship between individual and group's rights and power.

#### *Law and Rights as Culture*

Perhaps the best entre' into the tensions between rights and the law is to understand that human rights and the law are both culturally situated discourses. While culture is usually seen in the Western world as backward, anti-feminist, and opposing human rights, some scholars have argued that we must understand legal and rights frameworks as themselves cultural products (Coomaraswamy 2001; Cowan, Debor and Wilson 2001; Merry 1990; 2006). Culture, in this instance is a process of meaning making which is dynamic, contested, unbounded and interpretable (Cowan, Debor and Wilson 2001; Merry 1990; 2006).

This view of both rights and law as cultural discourse allows

~60~

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for a critical interrogation of power at multiple levels and allows for a conceptualization of both individual and/or group agency. This perspective acknowledges that 'human rights are socially constructed and...are rooted in political, economic, and cultural power relations' (Coomaraswamy 2001:13). But we should also recognize that people may take up particular legal and or rights discourses to make their claims successful (Polletta 2006; Merry 1990; 2006). While certainly not all people have the same access to particular claims, there is certainly creative room that groups or individuals may deploy to challenge or broaden notions of what is a human right and what constitutes a legal claim. Merry argues that people develop a 'legal consciousness' through their understandings of their selfhood, moral order, and culture (1990; 2006). For human rights frameworks to be successfully adopted, Merry finds that people must 1) be willing to take up the framework, 2) have that framework and or their claims recognized by powerful institutions and 3) be able to translate the framework in ways that are meaningful on the ground (Merry 2006).

#### 'WOMAN AS...': PERSONHOOD, RIGHTS AND THE CASE OF DOMESTIC VIOLENCE

While scholars have argued that women's ability to access rights has been restricted by the seemingly gender-neutral tenants of liberalism, gendered scripts are key to accessing institutional and judicial resources (Hamilton 2010). A brief historical analysis reveals that women have strategically used gendered identities in order to make positive social change. The history of domestic violence activism in the United States provides examples of the changing definitions of women's personhood and subsequent access to rights from the state. In the United States, women have only been able to access freedom from systematic violence if they inhabit a certain status: woman as wife, mother, worker, etc. In many cases, this was a strategic decision in order to secure funding or increase political viability. We show how these strategic deployments of identity are used agentially to access rights and to make legal changes. However, we recognize that the gendered scripts may be limited in terms of which women may readily access and successfully deploy them.

~61~

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### *Woman as Wife*

Even though the term 'domestic violence' is relatively new, intimate partner violence has a long history in the United States. In the 18th century, church courts would decide on cases of rape or domestic violence, almost always preferring to keep the family together (Pleck 1987). 'Good' wives were those who stayed with their husbands, no matter how severe the beatings. Despite the submission of personal integrity to the sanctity of the family, early colonial law acknowledged marital violence and passed the first laws prohibiting it. The Massachusetts Body of Liberties of the Massachusetts Bay Colony passed one such law against wife beating that stated, 'Everie married woeman shall be free from bodilie correction or stripes by her husband, unlesse it be in his owne defence upon her assault' (Pleck 1987:21-22). The 19th century brought increased activism against wife beating. Both the feminist and temperance movements saw wife beating as a social problem. Whereas the temperance movement saw alcohol as the root cause, feminists saw the hierarchical structure of marriage and divorce laws as the chief facilitator of violence against women (Schneider 2000). The discourse of wife beating as a symptom of alcoholism became the dominant frame, and shelters for wives of alcoholics were created.

### *Woman as Mother*

Through the rest of the 19th and early 20th century, the critique of patriarchal marriage subsided and the first formal social agencies to deal with family violence were created, primarily as aid to children. Societies for the Prevention of Cruelty to Children (SPCCs) were founded by members of the upper class and were often used as places of refuge for women experiencing domestic violence, who would gain entry by making claims as mothers in the name of safety for their children. SPCCs served a secondary purpose as well. They were largely a mechanism of social control of 'disorderly' immigrant families who were a threat to middle class values and national stability (Gordon 1988) Domestic violence was one of the many problems associated with poor immigrant communities warranting formal intervention.

Despite formal intervention (albeit, indirectly), many women remained ambivalent about the individual 'right' to freedom from

~62~

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violence throughout this period. Given the choice of protesting beatings and being left homeless with no source of income, many women chose to stay with abusive husbands. It was not until (certain) women had the possibility independence from their husband through outside employment, divorce and remarriage, birth limitation, and government aid to single mothers did the concept of the entitlement to freedom from violence become realized (Gordon 1988:256).

#### *Woman as Worker*

It was not until 1971 that the first shelter dedicated solely to aiding battered women opened in the United States. The shelter movement of the 1970s paved the way for discussions of the scope of the problem of domestic violence and the need for federal intervention. Initial discussions of a national domestic violence policy were initiated in 1990 when the Violence Against Women Act (VAWA) was introduced by then Senator Joseph Biden. In the following years, feminist organizations, along with a coalition of civil rights and worker's rights groups organized to lobby Congress in favor of the Act (Gelb 2003).

The Commerce Clause, which grants federal intervention into any activity that obstructs interstate commerce, was utilized in VAWA after four years of witness testimony and data gathering that sufficiently demonstrated the effect of violence on women's ability to participate fully in the national economy as workers and consumers. Statistics show that homicide is the leading cause of death for women at work, almost half of all victims of rape lose their jobs, and batterers frequently harass their partners at work (Goldscheid 2000:116-117). Reports also state that gender-based violence not only costs millions in health-care costs per year but costs employers an estimated \$3 to \$5 billion as a result of absenteeism due to domestic violence annually (Biden 2000:22). The use of women's roles as workers and consumers is the first alternative to the traditional wife or mother frame for claimsmaking, by privileging the relationship of the ungendered but productive citizen to the state.

Certainly the roles of a woman as a mother and the toll that domestic violence takes on children's lives are important issues to discuss. We briefly cite these examples to show how central relationships are to the notion of womanhood, and to argue that the

~63~

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provision of such evidence comes from a structured history of how women's rights are mobilized in the United States. This trend is potentially harmful and limiting to policy

#### JESSICA GONZALES: GENDER NEUTRAL OR PRIVILEGED WOMANHOOD?

##### *Domestic Cases*

Jessica Gonzales' motherhood is central to the symbolic resonance of her case, since her daughters were the primary victims of her husband's violence. Despite this, the arguments made by her lawyers at the state and federal level are surprisingly absent of gendered issues. These issues include the state's duty to enforce restraining orders, the duty of the state to protect citizens against private acts, and due process. In her U.S. Supreme Court case, Gonzales' attorneys argued that her right to equality under the law was violated because the lack of enforcement of her restraining order, which follows the historic pattern of inadequate or non-response of police officers in domestic violence calls.

The issue of state responsibility has also been central to the limits of the duty of law enforcement's to protect private citizens from violence. In *DeShaney v. Winnebago County Department of Social Services* (1989), state responsibility for protecting private citizens was deemed conditional, even when the state has had some level of prior knowledge of potential risk of violence. The facts of *DeShaney* are as follows. Four-year-old Joshua DeShaney, who was hospitalized after his father beat him, was released to his father's custody three days after leaving the hospital. The case against his father was subsequently dismissed, but the Department of Social Services checked in on Joshua and his father multiple times from 1983 and 1984, in which no action was taken despite suspicion of continued abuse. In March of 1984, Joshua's father beat him so badly that Joshua suffered extensive brain damage leaving him permanently disabled. Even though the Department of Social Services was monitoring the family at the time of Joshua's abuse, the court ruled that the state did not have any 'affirmative duty' to protect Joshua as he was not technically under state custody at the time of his beating. The majority opinion held that '[t]he affirmative duty to protect arises not from the State's knowledge

~64~

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of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his behalf (DeShaney v. Winnebago County Department of Social Services 1989). Similarly, the existence of a restraining order in the *Gonzales* cases failed to meet the 'special relationship' requirement, adding that such a ruling could result in a landslide of public expectations of the enforcement of private citizen's rights (Combs 2006).

This gender neutral language in determining the relationship between the state and the citizen, and the duties attached is markedly different from the emotional language in documents provided to the IACHR. We argue that the absence of the recognition of the gendered nature of the majority of domestic violence cases in the United States hinders the ability of the state to responsibly enforce domestic violence law and not be subject to more general (and over-exaggerated) issues of private citizens' rights.

#### *IACHR and Womanhood*

In the case before the IACHR, Gonzales' counsel claimed that her right to special protection for mothers and children (as stipulated in Article VII of the American Declaration) was violated. Additionally, petitioners claimed that the United States violated Gonzales' right to due process by failing to protect her daughters from domestic violence and their inadequate investigation of her daughter's murders (Lenahan v. United States 2010). For example, an amicus curiae brief submitted on behalf of Gonzales concludes with the following statement:

By failing to protect women from violence and hold their batterers accountable the United States flouts the American Declaration and basic precepts of international law which secure the right to life and to family life (Chaudior 2008:32).

The consequences of failure to enforce Gonzales' restraining order may be implicitly read into this conclusion: Gonzales lost the right to 'family life.' Omitted are other notions of human rights which are certainly violated when we conceptualize domestic violence as a

~65~

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human rights violation.

It is important to note that among the seven claims against the United States, the IACHR could not find sufficient evidence to conclude that the U.S. violated: the 'Right to protection of honor, personal reputation and private and family life' (Article V) and 'Right to a family and to protection thereof (Article VI) (Organization of American States 1948). It is important to contrast this with Article VII: 'Right to protection for mothers and children,' which the United States violated. In this example, the specifically gendered conception of the rights of mothers and children were upheld, while the gender-neutral right to protection was not.

The *Gonzales* case leaves domestic violence and human rights activists with several questions to be explored. First, how can challenges to existing laws incorporate a gendered picture of a person, without automatically assuming wife and motherhood as the primary relationship that legitimates attention from state and international bodies? Furthermore, how do we incorporate a gendered understanding of personhood which would help us frame women's rights as human rights? These questions should be confronted when shaping future policy and we suggest that the potential for an alternative construction exists within the human rights framework

## DISCUSSION

As stated above, feminists have vigorously debated the utility of liberal personhood for the realization of human rights as women's rights (Nussbaum 1999; Okin 1999). One of the most widely used critiques argues that liberalism largely ignores the private sphere, where the state has historically had a policy of nonintervention. In contrast to this, in the documents submitted to the IACHR, the complainant is framed as a woman very much situated in her relationships. While the *Gonzales* case has been touted as the first individual complaint of a human rights violation against the United States by a domestic violence survivor, it certainly follows the historic pattern of highlighting women's roles as mothers and wives, instead of women as citizens. While this may be a strategic tactic on the part of the ACLU, we argue that this choice of a test case has the potential to discursively and political exclude women who are not mothers, as well as women who suffer from domestic violence in relationships that are

~66~

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outside of marriage (e.g. as partners in heterosexual, lesbian, bisexual, trans or queer relationships, or with an abuser who is not an intimate sexual partner).

At the same time, we find the continued presumption of a neutral citizen in legalese also problematic. In arguments about the reformation of laws in the United States to provide adequate protection, the privileged relationship is between the state and the citizen, and the citizen with another citizen. The citizen has historically had a male face (and body) which serves as the default for determining which rights are 'special' (MacKinnon 2006). The utter absence of a gendered notion of personhood could be potentially problematic in that it does not take into account power differentials. Too often, enforcement of laws in domestic violence situations are predicated on the individual discretion of the police, judges, and social service workers. Failure to account for how gender stereotypes and institutionalized sexism play into differential enforcement of domestic violence laws leaves us with an unhealthy concept of domestic violence as indistinguishable from other acts of violence committed by one private citizen against another.

How then, can we integrate an understanding of gender into the United States legal discourse? How then, can we create a discourse in the United States and internationally, which does not equate a woman with a particular identity which excludes women without children, women who are not married, women who suffer from violence that is not as sensational as Jessica Gonzales.

For these answers, we return to our discussion of law as a cultural discourse. In the United States, the discourse of human rights violations tends to be focused on what's happening 'out there' rather than 'in our own backyard' (Armaline, Glasberg, Pukayastha 2011). To develop a human rights consciousness requires a cultural shift in terms of how we see ourselves. We argue that this cultural shift could start with the United States signing the Convention to Eliminate Discrimination Against Women. Such an institutional and structural level shift allows for a consciousness and a utility of claims-making. At the macro-level, it also provides an institutionalized 'check' on the United States by other nations and by non-governmental organizations.

Having an institutionalized record of a commitment to

~67~

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*S. Missari & C. Zozula/Societies Without Borders 7:1 (2012) 52-73*

women's rights means that rights-consciousness and the access to recourse may be strengthened. Merry (2006) argues that human rights are 'made in the vernacular;' that broad universal ideas about rights and identity are tenable when they have discursive power in a local context. As we see in the brief review of women's rights in the United States, groups drew from powerful cultural conceptualizations of rights to make broad social changes.

For instance, the VAW was drafted on the basis of women as workers and interstate commerce, but the discursive understanding and practical deployment of the VAW Act does not draw on these notions (Missari 2011). The legal basis or state commitment to a particular set of values may also open up the discussion to rights that are seemingly excluded from the formal discourse. Falcón (2009) shows how domestic groups were able to deploy a treaty from the 1960's to make claims about gendered and racial inequality in issues of reproductive justice. She found that The Center for Reproductive Rights was able to use the UN's review process on the US's compliance with the International Convention to Eliminate All Forms of Racial Discrimination, which the US ratified in 1994, make rights claims about women of color's access to sexual education, reproductive rights, and sexual health. So then, once a treaty is ratified or a commitment is made at a national level, groups and concerns which may have been ignored can draw from both powerful and recognizable discourses.

Making human rights in the vernacular does not ensure that all claims will be successful or will as readily conform to gendered scripts that hold power. We still need a way to understand the differences and similarities of women in violent relationships. We have argued previously that while domestic violence is a problem for all kinds of women, the particular experience of legal access is largely dependent on class, race, culture and other structured positions. We argue, as Martha Nussbaum has, that the conception of liberal personhood frequently used in domestic litigation and legislation is 'not individualistic enough' (1999:63) to account for women's unique experiences as the primary victims of this type of patterned violence. Following Nussbaum's assertion, we argue that the ways in which domestic violence claims are framed are not individualistic *enough*, in both U.S. and international discourse. Therefore, a gender-neutral

~68~

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*S. Missari & C. Zożula / Societies Without Borders 7:1 (2012) 52-73*

approach ignores women's experiences as individuals who are routinely faced with a specific type of violence precisely because they are women. At the same time, using a specifically gendered approach ignores women who cannot make claims based on their position within the traditional heteronormative family, their conceptualization of their identity, and their structured position which may hinder access to resources.

### CONCLUSION

Despite its recent victory in the IACHR, we do not yet know if the *Gonzales* case will have any meaningful effect on the conceptualization of domestic violence as a human rights violation in the United States. As we have shown, following the history of successful intervention, those involved in the case have efficiently utilized specific rhetorical devices depending on the context: gender neutral in United States courts and specifically gendered in the IACHR. However, these two viewpoints have remained distinct in their approach to justice for survivors of domestic violence and have yet to come to a mutual point of understanding, where courts, lawyers, and activists can conceptualize a woman as a gendered person in a more inclusive sense.

We argue that structural and cultural changes, along with persistent and consistent action on the ground will allow for more inclusive modes of domestic violence claims. The ratification of CEDAW would provide women in the United States with the access and power to deploy human rights claims in domestic violence charges. A shift in consciousness from the liberal individual to the gendered individual will also be crucial. In order to implement this we follow Nussbaum's suggestion for the integration of feminist critiques *and* the individual dignity of people, regardless of role. Using this framework, a domestic violence survivor could make claims of a violation of her human right to bodily integrity as an individual, while recognizing that this specific type of violence is 'gendered' in its ubiquity in the lives of women regardless of context, culture, and social position.

With an understanding of human rights and the law as cultural discourses which can change and shift through interaction with people and groups, we can proceed to conceptualize a way in

~69~

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which woman can make rights claims in meaningful ways. By understanding women as differentially situated due to class, culture, nationality, citizenship, and the relationships and identities that are meaningful to them, then we can shy away from making one grand claim for what constitutes women's rights and the violation of those rights. Understanding that rights consciousness is institutional, and that state actors must accept the discourses and rights claims as valid, some institutional changes must be made. In the United States, the ratification of CEDAW is integral to holding the state accountable for claims of women's rights abuses as well as for developing a human rights consciousness in the United States. We need more people like Jessica Lenahan to bring their cases to legal institutions claiming human rights violations. We need a cacophony of women and their experiences in order to create a multitude of workable, meaningful, and successful frameworks for ensuring women's rights.

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~70~

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~71~

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~72~

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~73~

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