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Law, Life, and Literature: A Critical Reflection of Life and Literature to Illuminate How Laws of Domestic Violence, Race, and Class Bind Black Women Based on Alice Walker's book *The Third Life of Grange Copeland*

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Law, Life, and Literature:
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The Third Life of Grange Copeland

ANGELA MAE KUPENDA

"[A woman] who is sensitive and accustomed to an environment of breeding, education or culture might be severely affected and harmed by [domestic abuse] considered minor by one *hardened by harsh treatment . . .*."¹

Dat man ober dar say dat women needs to be helped into carriages, and lifted ober ditches, and to have de best places . . . and *ain't I a woman?* Look at me! Look at my arm! I have plowed, and planted, and gathered into barns and no man could lead me and *ain't I a woman?* I could work as much as any man (when I could get it) and could bear de lash as well—and *ain't I a woman?* I have borne five children and I seen em mos all sold off into slavery, and when I cried out with a mother's grief, none but Jesus hear—and *ain't I a woman?*²

"No this one is it 'I do ya like I do ya cause I thot ya [a black woman] could take it'"³

1. *Faries v. Faries*, 607 So. 2d 1204, 1209 (Miss. 1992) (italics added; internal quotations omitted).

2. BELL HOOKS, *AIN'T I A WOMAN* 160 (1981) (speech of Sojourner Truth, responding to a white man's claim that women are weak and inferior) (italics added).

3. NKOZAKE SHANGE, *FOR COLORED GIRLS WHO HAVE CONSIDERED SUICIDE WHEN THE RAINBOW IS ENUF: A CHOREOPOEM* 52 (1977).

I. INTRODUCTION

Consider Law, Life and Literature. Which of the three is the most real, honest, and inclusive? Many would answer the law because it takes into consideration all of the facts and circumstances to formulate a clear and consistent rule, and literature is the most unreal, the most fictional of the three. However, that is not accurate.

Of the three, literature is actually the most real, honest, and inclusive. It is real because, with brutal honesty, it deals with all of our realities. It is more honest than life, for often in our outer (and even inner) lives we are afraid to tell the plain truth. Literature is more real than the law, for often our laws ignore the realities and truths for many of us. For example, in a civil rights course I teach, students, especially more politically conservative students, read a rule in a case and say the law is right, the rule makes sense. But I then ask them to consider some additional facts of the case Then they respond that, given that reality, the law is all wrong and the result is just not fair considering those facts.

Law, Life, and Literature: the law is often exclusive and ignores the factual realities of many—what kind of law is that? In this article, I use literature and life to explore the impact, especially on black women, of divorce laws and the movement toward fault.

All across this country there is a movement to “save” marriages by making divorces more difficult to obtain. As a result, many will have to prove “acceptable” grounds for divorce to be set free. This is problematic when the marriage is filled with spousal abuse.⁴ Moreover, this method of “saving” marriages by restricting the freedom of women⁵ is especially problematic for black and other non-white women.⁶

4. See EVELYN C. WHITE, CHAIN CHAIN CHANGE: FOR BLACK WOMEN DEALING WITH PHYSICAL AND EMOTIONAL ABUSE 9 (2d ed. 1994) (defining abuse as physical, mental, or emotional).

5. Although sometimes men, too, are victims of spousal abuse, this paper is written primarily from the point of view of abused women. I hope that what is said here, however, is ultimately beneficial to all who are abused (regardless of gender, race, age, or marital status) by others and by unreal laws and systems of domination.

6. It is just a myth that black women are abused more than white women. LENORE WALKER, THE BATTERED WOMAN 22 (1979). White and black women, rich and poor women, educated and uneducated women all have been victims of domestic violence. However, as will be discussed, black and other nonwhite women generally have fewer resources to make changes and generally confront a more hostile legal system.

The goal here is not to point the finger at black men (who too suffer), but rather the goal is to expose violence and begin a healing. Maybe one day instead of silencing victims, we will unsilence abusers. And maybe one day we will begin to “save marriages” not by keeping women

Under the laws of some states, these women may be viewed as “hardened”⁷ and able to withstand more abuse and therefore not deserving of freedom from an abusive marriage through divorce. I explained these laws to a woman who responded aghast, “Why would the law want to keep women or anyone bound to a violent or just unproductive or unhappy marriage?”⁸ Then when I explained the laws to another woman, she answered the other woman’s question with one word, “domination.”⁹ Why keep black women bound and enslaved in such relationships, except as a continued tool of domination and control over their lives and to keep them so beaten down and susceptible to other abuses of power?

The first place to start is by looking at literature and life, as they offer some illumination as to the limited imagination of these dreadful laws.

II. LITERATURE—ALICE WALKER’S MEM—WITH BOLDNESS AND WITH BRUTAL HONESTY TELLING THE REALITY

Although Mem is a minor character in Alice Walker’s riveting book, *The Third Life of Grange Copeland*,¹⁰ her life reflects the reality of domestic violence.

As a young woman, Mem was a plump, cherry brown colored, educated, proper, warm, and mildly content black woman, who had barely escaped poverty through her education.¹¹ After being bound by the family law of violence, race, and class, Mem became hardened by all of the harsh treatment and was described as ugly, beat down, ignorant, sickly, and with looks described as a haggard witch.¹²

When she was free, lovely, and content, Mem met, fell in love with, and married a young man named Brownfield,¹³ who loved her dearly. Moreover, he loved her just like she was.¹⁴ She was so good in his mind that having her was as good as, or better than, having a white

entrapped but rather by taking steps to build happy and non-abusive unions for people of all colors.

7. *Faries v. Faries*, 607 So. 2d 1204, 1209 (Miss. 1992).

8. Telephone Interview with Evelyn G. Perkins, in Jackson, Miss. (Feb. 10, 1998).

9. Telephone Interview with Minnie L. Moore, in Jackson, Miss. (Feb. 10, 1998).

10. ALICE WALKER, *THE THIRD LIFE OF GRANGE COPELAND* (1970).

11. *Id.* at 43-44.

12. *Id.* at 55, 84, 104.

13. *Id.* at 48.

14. *See id.* at 49-50.

wife. Mem and Brownfield set up family life as sharecroppers in the south.¹⁵

The years of sharecropping, years of always being told that he owed the white man at the end of the year, years of seeing that “[h]e could not save his children from [the new] slavery,”¹⁶ took a toll on Brownfield. In addition, years of turning into stone when he had to talk with white men and, because of the social order, not being able to respond to them as a man or live as a man also affected Brownfield. He exacted this toll on his lovely wife Mem. As he became more and more depressed from his indebtedness, from his unanswered prayers, and from his powerlessness, Brownfield began to accuse Mem of infidelity, although he knew it was not true.¹⁷

Brownfield knew that Mem was not deserving of the station in life that he saw himself imposing on her. As he thought he could not improve her station, he resolved to turn Mem into a “ni_____ and a whore,” who he believed did deserve her station in life.¹⁸ As he began to abuse Mem verbally and physically, her submission to him only gave him greater fuel.¹⁹

The tender woman he married he set out to destroy. And before he destroyed her he was determined to change her. And change her he did. He was her Pygmalion in reverse. . . . [He told his friends,] “I beat[s] [sic] her ass. Only way to treat a ni_____ woman.”²⁰

Mem, who had barely escaped poverty, easily slipped back into a “culture of poverty” to try and please her husband.²¹ Brownfield was determined that Mem not think of herself as deserving as a white woman. He did all in his power to turn her into a “ni_____ woman” whom he thought deserved nothing but hard times and abuse.²²

Although Mem had suited Brownfield when they married, he sought to change her into something that “he did not want, could not want, and that made it easier for him to treat her in the way that he felt she deserved.”²³

“Just remember you ain’t white,” he said, even while hating with all his heart the women he wanted and did not want his wife to imitate.

15. *Id.* at 49.

16. *Id.* at 54.

17. *Id.*

18. *Id.*

19. *See id.*

20. *Id.* at 56 (racially offensive word abbreviated).

21. *Id.*

22. *See id.* at 56-58.

23. *Id.* at 57.

He liked to sling the perfection of white women at her because color was something she could not change and as his own colored skin annoyed him he meant for hers to humble her.²⁴

Mem wanted to get free, but her options were limited. Her mother was dead. Her only living aunt despised her, and her father ignored her.²⁵ Even when she found a job and could afford a better home, she took Brownfield with her on the condition that he would behave himself better.²⁶ He did for awhile. She thought he was reformed. But when she became ill and dependent again, Brownfield returned to his old ways²⁷ and took her back to what, he convinced himself, she really deserved.²⁸

All of Mem's efforts could not change Brownfield or make the demons of racism and poverty that haunted him go away. Initially, Brownfield himself had lived in an home with a submissive mother and an abusive haunted father.²⁹

The "hardened" Mem stayed in the relationship . . . upheld her marriage vow of "until death do they part." She "saved" her marriage . . . but then lost her life in an untimely (or perhaps, for her sake, timely) death at the hands of her troubled and oppressed husband.³⁰

Mem did not get free in time. She was bound until her death, a tragic death within the eyesight of her troubled children and at the hands of her troubled mate.³¹ Had race, class, and family law dynamics released their holds on her, Mem's enterprising ways could have assured her a better life, if not even a little happiness.

Is the marriage of Mem and Brownfield the type of marriage that we want other Mem's to endure under the force of the law? The name "Mem" means "same"³² and the same will happen to other black women unless the law is enlightened through literature and life. The same thing that happened to Mem almost happened to me. Our telling of "life" is not as honest as literature, but following here is a small part of the story of this Mem.

24. *Id.* at 58.

25. *Id.*

26. *Id.* at 96.

27. *See id.* at 105-06.

28. *See id.* at 101, 105-08.

29. *See id.* at 5.

30. *Id.* at 122.

31. *Id.*

32. ALICE WALKER, *THE THIRD LIFE OF GRANGE COPELAND* 344 (Pocket Books 1988) (1970) (afterword).

III. LIFE—A PERSONAL NARRATIVE OF ANOTHER
MEM—REAL, BUT A STRUGGLE TO BE HONEST AND A
STRUGGLE TO FIND HER REALITY REFLECTED IN
THE LAW³³

For years she struggled with the binds imposed on her by herself and others. She was ashamed of the verbal and emotional abuse and the occasional physical violence that was happening to her in the sanctity of her home and in her marriage. Once as she fled out of the house for safety, he said, "Don't go out there in the dark, woman. Don't you know that it is unsafe for a black woman out there." "Yes, and it is unsafe for this black woman in here, too," she thought.

She was also bound by the widespread system of racist and sexist domination that continued to perpetuate the social settings for domestic violence. She was hurt by the inadequate response of helping agencies and by her church's silent reaction. She thought the black community would blame her for failing to love and to submit to her black man enough so that he would not feel "provoked" and want to hurt her. The color of her dark skin and the fear that sharing her pain would be a betrayal of her blackness silenced and bound her. She was also bound by guilt and by the embarrassment she felt as she met the eyes of others who did not understand why she had such difficulty leaving . . . and staying.

Somehow, miraculously, she ended up in law school. In class she studied assault and battery. She thought about how, if he had done those things to someone else, he would be punished by the law for his conduct. Somehow, strangely, what was happening to her was "family" business, not illegal conduct.

When family life became psychologically and spiritually unbearable (or when she found courage, she is not quite sure which), she departed the marital home with only the clothes on her back and a determination to be free. She told him, "You take the house and all the assets. I'll take the debts, but just let me go . . . please." He refused.

Under her state's law, because he would not agree to the divorce, she would have to prove grounds to get free. Her grounds would be habitually cruel and inhuman treatment. A kind legal services attor-

33. As stated earlier, life is not as real as literature. Often in our lives, we are afraid to tell the plain truth. Although what follows is a personal narrative, I must tell it with some detachment; therefore, I use the third person.

ney (who had to decline her divorce case, not enough government money)³⁴ said, "Please tell your lawyer to look at the case law—you have to be prepared to deal with this law that may keep you from getting free." She had done well, considering all of her circumstances, and had grappled with the concepts of racial loyalty and the debilitating effects of domestic violence that had kept her psychologically bound. Now she would have to deal with concepts of race, class, and family law that could keep her legally bound "until death do they part." As the legal services lawyer explained the controlling cases, she went into a daze of disbelief. The lawyer was saying that, because she was black, under the law and in the eyes of some courts, she might not have been abused *enough* to be entitled to legal freedom. The lawyer explained that, because of her race she may be viewed as tougher or hardened and might not be entitled to be free under that law. She read the cases.

As summarized by a major treatise, the sad cases essentially confirmed the lawyer's view:

[I]n determining whether or not the habitual or unusual conduct of the defendant has been such as to amount to cruelty within the statute [to justify a contested divorce] . . . , his or her entire course of conduct during the period complained of must be considered, as well as that of the complainant, in order to show what provocation, if any, there was to cause the [abusive conduct]. *In all cases the court should bear in mind the intelligence, apparent refinement, social station and delicacy of sentiment of the parties, because it is well understood that conduct which would be extremely humiliating and offensive to a [woman] of high social and cultural standards may be of no moment to [women] of a less refined nature [or hardened women].*³⁵

Another case provides that "[a woman] who is sensitive and accustomed to an environment of breeding, education or culture might be severely affected and harmed by [domestic abuse] considered minor by one *hardened by harsh treatment*"³⁶

34. Recently at a local legal services conference, I was told that now if a woman is in a violent home (whether she has children or not), legal services will provide assistance for obtaining restraining orders and might be able to provide assistance with obtaining a divorce, depending on the circumstances and available resources.

35. N. SHELTON HAND, JR., MISSISSIPPI DIVORCE, ALIMONY AND CHILD CUSTODY §§ 4-12 at 73 (4th ed. 1996) (italics added).

36. *Faries v. Faries*, 607 So. 2d 1204, 1209 (Miss. 1992) (italics added; internal quotations omitted) (citing *Parker v. Parker*, 519 So. 2d 1232, 1235 (Miss. 1988)).

The cases suggest that a marriage should not be legally ended on the basis of habitually cruel and inhuman treatment unless the mistreatment is having an observable effect on the woman. In addition, courts hold that a woman who is "hardened" by harsh treatment³⁷ may not be deserving of legal freedom from more marital abuse. However, a woman who is delicate and of high society, highly educated, or cultured may be deserving to be set free from even minor mistreatment by a spouse.³⁸ And, all of this would be based on a chancellor's fact finding, a chancellor's perceptions (bias, stereotypes) of the woman standing in court, and the chancellor's views as to the legitimacy and delicacy of that particular woman or type of woman.

One commentary goes a step further and states that there may be women for whom "mere [physical] blows [to her body] should not be considered cruelty . . . and might be productive of only slight unhappiness."³⁹ In many minds a picture has been painted of black women as hardened, tough, back-talking, strong, permissive, and undeserving of protection, women for whom blows might not be considered cruelty.

After reading the cases, she wondered whether she would ever be free. She wanted, needed to be free to save her mind, life, and soul. She knew that the alternatives for women in abusive relationships were limited.⁴⁰ She needed the finality of divorce. When a woman stays in an abusive relationship and does nothing, she will likely face more years of abuse or possibly death (or prison, if she takes the law into her own hands).⁴¹

Whether she deserved under the law to be free was another matter, especially for a black woman whom some would see as tough and "hardened" by the ongoing struggle of being black and female in America.

Mem means same.⁴² Trapped like Mem was trapped, she was about to experience the same thing.

37. It is not clear if this hardening is measured based on harsh treatment from society or from her mate. Regardless, the woman who has received the harshest treatment, then, is less deserving, under the law, of freedom from future harsh treatment.

38. See *Faries*, 607 So. 2d at 1209; *Parker v. Parker*, 519 So. 2d 1232, 1235 (Miss. 1988); see also *Gerk v. Gerk*, 158 N.W.2d 656, 660 (Iowa 1968); *Kantaris v. Kantaris*, 169 N.W.2d 824, 827 (Iowa 1969); *Gazzillo v. Gazzillo*, 379 A.2d 288, 295 (N.J. Super. Ct. Ch. Div. 1977); *Ormachea v. Ormachea*, 217 P.2d 355, 359 (Nev. 1950); *Coolman v. Coolman*, 348 P.2d 471, 472 (Nev. 1960); *May v. May*, 79 Cal. Rptr. 622, 625 (Ct. App. 1969); *McCullough v. McCullough*, 36 S.W.2d 459, 462 (Tex. Comm'n App. 1931); *Grossman v. Grossman*, 90 So. 2d 115, 117 (Fla. 1956).

39. 24 AM. JUR. 2D, *Divorce and Separation* § 36 (1983).

40. See WESLEY R. MONFALCONE, *COPING WITH ABUSE IN THE FAMILY* 92-93 (1980).

41. *Id.*

42. WALKER, *supra* note 10, at 344.

IV. THE LAW—DESPERATELY IN NEED OF ILLUMINATION AND ENLIGHTENMENT

A typical response to these “real” stories, of a Mem from life and a Mem from literature, is that it is only a problem in a few jurisdictions, so it is not really worthy of much attention, comment, or change.

There are two replies to this response. The first reply is, even if the law here is applied in only one jurisdiction and only one black woman is viewed as hardened enough to take it and is chained by the law to an abusive marriage, that one is too much to lose. The second reply is that, if the law is not illuminated and exposed, many more Memns will likely suffer in the coming years because of the current movement all over the country to make divorce more difficult.

A. Present Movement to Make Divorce More Difficult for All Women

There is a push all across the country to “save” families by making divorce more difficult. Although some states now have no-fault divorces, other states require, if the husband does not consent, the wife to prove grounds before she may be set free. In abusive relationships, the husband may not freely consent because spousal abuse is often about control and domination.⁴³ As a conservative movement attempts to get more states to move towards requiring fault grounds for divorce, the futures for present day Memns are the same bleak future that Mem faced. It is a regressive movement, for historically a woman was required to demonstrate fault by her husband before she could obtain a divorce. The appearance of no-fault divorces brought great changes to that process. Even now in some states, both parties must still consent before a no-fault divorce will be granted.⁴⁴

Regardless of these restrictions, polls show that many Americans believe that presently divorce is too easily obtained.⁴⁵ Some blame the increasing divorce rate on no-fault divorce, and they push for a revolution that will save families by making divorce more difficult.⁴⁶

43. L. WALKER, *supra* note 6, at xi; WHITE, *supra* note 4, at 12.

44. See, e.g., MISS. CODE ANN. § 93-5-1, 93-5-2(1) (1972); see generally Peter Nash Swisher, *Reassessing Fault Factors in No Fault Divorce*, 31 FAM. L.Q. 269-292 (1997).

45. See Linda J. Lacey, *Mandatory Marriage “For the Sake of the Children”: A Feminist Reply to Elizabeth Scott*, 66 TUL. L. REV. 1435, 1436 n.4 (1992).

46. See David Blankenhorn, *Can U.S. Turn From Divorce Culture?*, CLARION LEDGER (Jackson), Jan. 25, 1998, at 1H (discussing reforms and movements to emphasize marriage over divorce); Laura Gatland, *Putting the Blame on No Fault*, A.B.A. J., Apr. 1997, at 50 (discussing

For example, one suggestion out of this movement is that the law should prohibit divorces for couples with children under the age of 21.⁴⁷ Another example from this movement is the recent "covenant marriage" bill passed in Louisiana.⁴⁸ Couples there will have an opportunity before marriage to choose a standard marriage or a covenant marriage, with the dissolution of a covenant marriage being far more difficult.⁴⁹ This present push to save families is couched in terms that on the surface appear noble and worthy of support. A look behind these terms, however, reveals the same paternalistic type of gender subordination that has kept women living unproductive lives in too many instances. The push would prefer to have people still legally married though abused or unhappy or unproductive rather than to see an end to the marriage and, perhaps, a beginning to a life free of abuse in the sanctity of one's home.

Another example of this movement is the present struggle that takes place annually in the Mississippi legislature. Presently, under Mississippi law, if both parties do not consent to a no-fault (or irreconcilable differences) divorce, one party must prove grounds for divorce. Every year, state representative Tomie Green introduces a bill to make irreconcilable differences a ground for divorce even if both parties do not agree to terminate the marriage, but every year the bill is defeated.⁵⁰ Representative Green argues annually that the bill would help "people trapped in difficult situations—ones that might be abusive, either mentally or physically. [A]nd without irreconcilable differences as a ground, that person can be stuck for years unless they are willing to bring their spouse into court [and] start airing dirty laundry. And then the children really get hurt."⁵¹ Opponents to that bill base their arguments on what they call the "total picture" of wanting to save marriages and avoid the consequences of divorce.⁵² Unfortunately, their "total picture" leaves out of the picture many abused women. Perhaps, like life and literature, the law does tell a "picture"

legislative movement to slow divorce rate by making it more difficult for couples to divorce); Monika Guttman, *Should You Be Locked Into Marriage?*, USA WEEKEND, June 21, 1996, at 4.

47. See generally Lacey, *supra* note 45, at 1436-39 n.7 (discussing others' proposals).

48. LA. CIV. CODE ANN. art. 102 (West 1993); see generally 66 U.S.L.W. 2152-53 (Sept. 16, 1997).

49. Terry Carter, *A Stealth Anti-Divorce Weapon*, A.B.A. J., Sept. 1997, at 28.

50. Billy Watkins, *Divorce Bill Sparks Irreconcilable Differences*, CLARION LEDGER (Jackson), Mar. 12, 1997, at 1D.

51. *Id.*

52. *Id.*

story, but a story that is based on certain ideal characters and ignores realities.⁵³

B. Movement Saving Mere Structures, not "Saving" Families

Even if the divorce rate slows as a result of the tactics in this "total picture" movement, marriages are not really being "saved," and negative consequences of divorce are not really being avoided. For example, the conservative push suggests that divorce must be prohibited to protect children from growing up in a household without the presence of a mother or a father. When the lives of children of divorced parents are examined, however, results are mixed as to how divorce affects children.⁵⁴ Those suggesting that divorce should be avoided at all costs do not consider that a child may be better off in a single parent non-abusive household than in an abusive two-parent household. Much has been said about the effects of divorce on children,⁵⁵ but much more needs to be said about the effects of an abusive marriage on the children in that home. There is evidence that children from these abusive households are more fearful and less self-confident.⁵⁶ Moreover, and perhaps even worse, boys who grow up seeing their father abuse their mothers are much more likely to become batterers themselves.⁵⁷ Additionally, female children who wit-

53. See generally Jane B. Baron & Julia Epstein, *Is Law Narrative?*, 45 BUFF. L. REV. 141 (1997).

54. See, e.g., *Decision Split on Effect of Divorce*, FLA. TODAY, July 18, 1997, at 1D.

55. See, e.g., Elizabeth S. Scott, *Rational Decision Making about Marriage and Divorce*, 76 VA. L. REV. 9, 11, 22 (1990).

56. Billy Watkins, *Living in a Battle Zone: Kids and Domestic Violence*, CLARION LEDGER (Jackson), Nov. 23, 1997, at F1. Consider the following statements from the executive director of a women's center for nonviolence:

I've seen children as young as 4 years old have to be treated for depression after living in a violent home. It's real common among children who face this. They feel fear, helplessness, guilt because they can't stop what's happening. They have poor self-esteem, little confidence. It can stay with them the rest of their lives. And we know that most men who beat their wives grew up in a violent household.

... If doctors think nice, soft music can soothe a baby before it's even born, what kind of effect do you think loud, screaming voices have on children *after* they're born?

What we've found is that children in violent households are more subject to substance abuse at an early age, more likely to get pregnant at an early age because they're out looking for love anywhere they can find it. They're more likely to run away, more subject to long-term depression and emotional disorders. And in some cases, it can lead to suicide.

Id.

57. See GINNY NICHARTY & SUE DAVIDSON, *YOU CAN BE FREE: AN EASY-TO-READ HANDBOOK FOR ABUSED WOMEN* 23 (1989); see also Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1254 n.44 (1991). Crenshaw stated that "[a] pressing problem is the way domestic violence reproduces itself in subsequent generations. It is estimated that boys who witness violence against women are ten times more likely to batter female partners as adults." *Id.*

ness violence against their mothers may themselves become victims of domestic abuse.⁵⁸ A woman may unfairly feel compelled to stay in an abusive marriage because of guilty feelings about breaking up the family. But it is just a myth that children need their father at home, even if he is abusive.⁵⁹ In *The Third Life of Grange Copeland*, Brownfield himself had seen his father repeatedly abuse his mother.⁶⁰ With a broken spirit, Brownfield's mother curled up and died after her abusive husband left home for good.⁶¹ Brownfield later inflicted this same type of abuse upon Mem and had less mercy on her than his father had on his mother. Brownfield did not run away; rather, he killed Mem and stayed.⁶² Many who urge the conservative agenda, of saving families by increasing the difficulty of obtaining divorce, ignore the struggle and realities of abusive households.⁶³

Remarkably, some even suggest that the no-fault divorce system itself has produced violent reactions and is, therefore, perhaps the cause of spousal abuse.⁶⁴ On the contrary, possibly no-fault divorce only brings to light, to public view, the violence that has existed all along in the private household.⁶⁵

Under a fault system, if the woman cannot prove fault to the court's satisfaction, she would be required to remain legally bound unless the spouse eventually consented to the divorce. This is not a good solution. The woman is likely to be already intimidated by her batterer and may be, or feel, powerless to persuade him to release her.⁶⁶ She may also be powerless to stay away from him if they are still legally bound.

It has even been suggested that a no-fault system should retain "fault" so that the violent spouse is accountable.⁶⁷ Abused spouses,

58. NICHARTY & DAVIDSON, *supra* note 57, at 23.

59. L. WALKER, *supra* note 6, at 30.

60. See WALKER, *supra* note 10, at 12.

61. *Id.* at 21.

62. *Id.* at 122.

63. Lacey, *supra* note 45, at 1443-46 n.38.

64. See, e.g., Lynn D. Wardle, *No-Fault Divorce and the Divorce Conundrum*, 1991 B.Y.U. L. REV. 79 (1991); Lynn D. Wardle, *Divorce Violence and the No-Fault Divorce Culture*, 1994 UTAH L. REV. 741 (1994).

65. According to Lenore Walker, domestic abuse "is a seriously underreported crime." L. WALKER, *supra* note 6, at 19. One report suggests that perhaps over 50 percent of divorcing women have been subjected to at least some physical abuse by their husbands.

66. See Beverly Horsburgh, *Lifting the Veil of Secrecy: Domestic Violence in the Jewish Community*, 18 HARV. WOMEN'S L.J. 171, 197-98, 201 n.147 (1995).

67. See, e.g., Barbara Bennett Woodhouse, with comments by Katherine T. Bartlett, *Sex, Lies, and Dissipation: The Discourse of Fault in a No-Fault Era*, 82 GEO. L.J. 2525, 2527, 2530 (1994).

though, may not want to have society punish their mates. The abused woman may be safer and more content with freedom from, rather than punishment for, her mate.

Unfortunately, the conservative push ignores that perhaps a better way to save marriages is to address the societal problems that hinder couples in their development of healthier, happier, non-abusive unions. Instead of forcing couples to stay together until “death” do they part, a better approach would be to make our society more violence-free and free ourselves of the systems that perpetuate racism and sexism—some of the tensions that come bearing down on marriages. Perhaps something else less noble is really the agenda here—not the saving of marriages.

C. Illuminating the Law and Seeing Gender Domination, the Continued Subjugation of Women, and Black Women at the Bottom of the Heap

A fault system coupled with a law that sees some women as more delicate and deserving of freedom than others, preserves traditional family marital structures at the expense of other Mem. The word Mem in French means same.⁶⁸ And there are a lot of women who are in the same predicament as Mem.

It carries society back to a prior time of problems when appearance and structure were deemed more important than reality and freedom. First, before the 1970s few, if any, family shelters existed for those fleeing from abuse.⁶⁹ Second, the mandate of family courts did not protect the abused:

[A] second problem devolved from the fact that the family court had exclusive jurisdiction over family offenses. . . . Its mandate. . . was “to keep the family unit intact.” This was so even when violence rose to the level of assault in the first degree where a victim is maimed. The state, effectively, elevated the sanctity of the unit over the safety of the individual.⁷⁰

Elevation of the structural sanctity of the family over the real safety of a woman points to patriarchal power and privilege. Rather than dealing with the power imbalances that continually perpetuate

68. WALKER, *supra* note 32, at 344. See also COLLINS ROBERT DICTIONARY 436 (2d ed., 1991).

69. Karen Burnstein, *Naming the Violence: Destroying the Myth*, 58 ALB. L. REV. 961, 962 (1995).

70. *Id.*

abuse, the power imbalances and the cost they inflict are not confronted.⁷¹ As stated by one scholar, “[t]he traditional fault paradigm, still dominant in some states, reflect[s] an obsession with controlling women and their sexuality. It ha[s] the virtue, however, of protecting (at least in theory) those conventionally virtuous spouses.”⁷²

It is not my intent here to completely ignore the sanctity of marriage. Rather, the intent is to promote the true sanctity of the home by promoting the sanctity of *all* individuals whether they are married women or men, black women or white women. The true sanctity of the home is upheld when all individuals within the home are respected. Protecting only the structural sanctity of the home, fault divorce laws that value some women—as more able to take “minor blows to the body”⁷³ and less worthy of freedom—less than other women provide a cultural defense to divorce that reinforces negative stereotypes that some groups are entitled to less justice or peace than others. This stereotyping can be disastrous to non-white women (and even perhaps some poor white women) who do not fit the traditional concept of the “conventionally virtuous spouse.”⁷⁴ For example, under the law,⁷⁵ a black woman who has had to be exceptionally strong to deal with racial and economic realities would not be entitled to the same non-abusive marriage as a white woman who has had a gentle life and who is seen as delicate and soft. This is a preposterous law.

Not only is this problematic for black women, but it is also problematic for any woman who is perceived as having neither the “traditional” type of refinement nor traditional cultural sensitivities. Perhaps it is even problematic for *any* non-white woman, as will be discussed later.

Domestic abuse alone, even without the support of the law, has always been especially oppressive for black women. Even if a black woman seeks help, society and law enforcement workers have found it

71. *Id.* at 964-65.

72. Woodhouse, *supra* note 67, at 2526.

73. 24 AM. JUR. 2D, *Divorce and Separation* § 36 (1983).

74. See, e.g., Tanya F. Goldstein, *Cultural Conflicts in Court: Should the American Criminal Justice System Formally Recognize a “Cultural Defense”?*, 99 DICK. L. REV. 141, 162-63 (1994).

75. See, e.g., *Faries v. Faries*, 607 So. 2d 1204 (Miss. 1992).

difficult to believe that she is really in need of, or deserving of, help like "other" women.⁷⁶

Unfortunately, she may not even seek help because forces may have already persuaded her that she is not deserving of such help.⁷⁷ One therapist who treats black women described these forces:

Black women learn early in their social development to deny the sexism to which they are subjected. They are in an unusual predicament. Often, by the time a black girl reaches adolescence, the expectation that relationships with black men will be harsh, oppressive, and intense has been ingrained in her mind. The black women I see have a subconscious attitude that I call "internalized oppression," *an almost tacit acceptance that they as [black] women will be mistreated by both society and black men.*⁷⁸

Moreover, racial guilt imposed on a woman already stressed from abuse may be the chain that keeps one linked to even more abuse.⁷⁹ Multiply oppressed, gagged and bound, black women in troubled relationships actually need *more* assistance from helping agencies and *more* protection by the law, not less as is currently the standard.⁸⁰

It would seem then that feminists who strive to eliminate domestic violence would be cognizant of these problems and would urge for changes in the legal system for more effective help for *all* women. Unfortunately, feminist attempts to eradicate domestic violence, though possibly well meaning, have generally worked to the disadvantage of black women. A myth has been that black women are battered more than white women.⁸¹ To their credit, feminists and even police departments have set out to dispel this myth—to stop the perpetuation of

76. WHITE, *supra* note 4, at 20. See also Linda L. Ammons, *Mules, Madonnas, Babies, Bath Water, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003 (1995).

77. See IYANLA VANZANT, INTERIORS: A BLACK WOMAN'S HEALING . . . IN PROGRESS 150, 153, 186 (1995) (sharing her own life story of her struggle to change; she accepted violence because she thought she "deserved" it).

It is just a myth that *any* woman is deserving of or the cause of her own abuse. What is actually going on is that the man is lacking in self control and/or is determined to control the woman completely even if it is necessary to use threats and force. See L. WALKER, *supra* note 6, at 29.

78. AUDREY B. CHAPMAN, GETTING GOOD LOVING: HOW BLACK MEN AND WOMEN CAN MAKE LOVE WORK 18 (1995) (emphasis added).

79. L. WALKER, *supra* note 6, at 66.

80. See Crenshaw, *supra* note 57, at 1245-46 (explaining how women of color are burdened by poverty and lack of job training which are consequences of not just race, but also of gender and class oppression).

81. That is untrue and just a myth. But although black women are not battered more than white women, black women generally have fewer financial, legal and other resources for help than do white women. L. WALKER, *supra* note 6, at 22.

the stereotype that all black men are violent.⁸² White feminists have also had, however, some questionable motives for seeking to dispel this myth. They have been afraid that, if people view domestic abuse as only a minority problem, people will not be interested in solving the problem and in saving black women from abuse. Consequently, abused white women would continue to suffer. White feminists fear that society will “dismiss domestic violence as a minority problem . . . not *deserving* of aggressive action.”⁸³ Stories by white women that “begin with a statement like, ‘I was not supposed to be a battered wife,’” imply that black and other nonwhite women *were* supposed to be the battered wife.⁸⁴ Similarly, divorce laws, like those challenged here that allow the delicate and cultured woman, but not the hardened woman, to be set free from abuse, are probably attempts to help the abused white woman who has difficulty proving *enough* abuse to be set free. When the law helps these “virtuous” white women, black women are once again regarded as not deserving enough to receive the law’s generous sweep of protections.

But this is not a new phenomena, nor is it a phenomena particular to domestic violence issues. Even when all other factors are held constant, for example, the rapists of black women receive less severe punishment than the rapists of white women.⁸⁵ One scholar reports that in a “case involving the rape of a young black girl, one juror argued for acquittal [of the rapist] on the grounds that a girl her age from that kind of neighborhood probably wasn’t a virgin anyway.”⁸⁶ And, society is less outraged and engaged over the rape of black women than it is over the rape of white women. This reveals, “a sexual hierarchy in operation that holds certain female bodies in higher regard than other [female bodies].”⁸⁷

And again this is not a new phenomena. Tracing back to the early days of slavery and the years following, images of black women were degraded and sexualized as black women were labeled as “bad” women deserving of the bad treatment they were receiving.⁸⁸ Black women were falsely depicted as immoral to justify the rape of black

82. Crenshaw, *supra* note 57, at 1256.

83. *Id.* at 1253 (*italics added*).

84. *Id.* at 1258.

85. *Id.* at 1275-76.

86. *Id.* at 1279.

87. *Id.* at 1268-69 (comparing the attention given the rape of the Central Park jogger to the non-attention given many other “equally horrifying rapes”).

88. *Id.* at 1270.

women by white men⁸⁹ and the whole scale system of forcing the children of black women into an uncompensated and abused workforce for building America.⁹⁰ To justify the workloads placed on them in the master's house and in the fields with the men, black women were depicted as unusually strong, masculine, and tough. They were pictured as "able to endure hardship no 'lady' is supposed to be capable of enduring."⁹¹ As further indication that black women were different from the white women who were deserving of better treatment, colonial white America placed black women in the fields in roles that white America saw as "surrogate" male roles.⁹²

Sojourner Truth attempted to blast some of these misconceptions in her famous speech, *Ain't I a Woman*, when she asserted that although she was black, not white; poor, not rich; and independent, not helpless, her claim to equal treatment was as just as that of white men and women.⁹³ This "strength," that some regard as a virtue of black womanhood, is often used as a sword or as a whip to keep black women in "their" place. For example, the laws questioned in this paper (the movement for fault divorce and the high standard of proving fault for *some* women) suggest that strong or hardened women should be left in an abusive marriage because they can take it.⁹⁴ Understandably, even black women continue to question whether their "strength" is really a plus or virtue. For "[a]lthough black slave[] [women] often boasted of their work ability, they longed to be treated with the same regard and consideration they believed was due them as a woman's privilege in a patriarchal society."⁹⁵ Even after slavery ended, the myth of the bad black woman continued to justify her exploitation. The differences in the way black and white women were also addressed and regarded by society continuously reinforced the myth.⁹⁶ The myth even gained force with the hardworking efforts of black women being acknowledged by society, but only as back-handed compli-

89. Shelby A.D. Moore, *Battered Woman Syndrome: Selling the Shadow to Support the Substance*, 38 How. L.J. 297, 331-33 (1995).

90. *Id.* at 327.

91. *Id.* at 333.

92. HOOKS, *supra* note 2, at 22-23.

93. See ANGELA Y. DAVIS, *WOMEN, RACE & CLASS* 63-64 (1981); HOOKS, *supra* note 2, at 160.

94. SHANGE, *supra* note 3, at 52 ("No this one is it 'I do ya like I do ya cause I thot ya [a black woman] could take it . . .").

95. HOOKS, *supra* note 2, at 48; see generally Audrey Edwards, *Black and White Women: What Still Divides Us?*, *ESSENCE*, Mar. 1998, at 77, 77 ("Black women said they see themselves as strong, assertive and vulnerable and that's a burden.").

96. GERDA LERNER, *BLACK WOMEN IN WHITE AMERICA* 163-64 (1992).

ments. bell hooks stated that “[society] labeled hard-working, self-sacrificing black women who were concerned with creating a loving, supportive environment for their families, Aunt Jemima’s, Sapphires, Amazons—all negative images that were based upon existing sexist stereotypes of womanhood.”⁹⁷

To be honest, the cases do not specifically state that “black” women will not be set free. So on the surface it appears that, under the cases, a black women who is delicate, educated, and highly cultured will receive the same consideration regarding freedom from abuse as a similarly situated white lady. That scenario, however, is unlikely; consider a frank remark and realistic appraisal of societal views from an honest black woman: “There are two kinds of females in this country—colored women and white ladies. Colored women are maids, cooks, taxi drivers, crossing guards, school teachers, welfare recipients, bar maids, and the only time they become ladies is when they are cleaning ladies.”⁹⁸

As a group, black women are portrayed, especially in the media, as “fallen” and undeserving women.⁹⁹ Unfortunately society believes this portrayal¹⁰⁰ or wants to believe it to justify the continued ranking of black women at the bottom of the heap and the continued labeling of black women as less deserving, which perhaps makes white women more deserving.

For black women in abusive relationships, the problem is further magnified. The “law” will leave her in the abusive marriage, but if she stays (for the sanctity of the home) and later injures her own abusive spouse, the legal system will again likely see her as “hardened” and not as a victim. If she urges that her “crime” is a result of the abuse and the battered woman syndrome, her defense will fail because she is not seen as a “normal—weak, passive and proper” woman.¹⁰¹ Race plays a role in these conceptions, or rather misconceptions or limited

97. HOOKS, *supra* note 2, at 70.

98. LERNER, *supra* note 96, at 217 (quoting Louise D. Stone, *What It's Like to be a Colored Woman*, WASH. POST, Nov. 13, 1966).

99. HOOKS, *supra* note 2, at 65-66.

100. *Id.* at 58 (“Even if an individual black female becomes a lawyer, doctor or teacher, she was likely to be labeled a whore or prostitute by whites.”).

101. See Sharon Angela Allard, *Rethinking Battered Woman's Syndrome: A Black Feminist Perspective*, 1 U.C.L.A. WOMEN'S L.J. 191, 193-94 (1991) (“While battered woman's syndrome furthers the interests of some battered women, the theory incorporates stereotypes of limited applicability concerning how a woman would and indeed, should react to battering. To successfully defend herself a battered woman needs to convince a jury that she is *normal—weak, passive and proper.*”) (emphasis added).

conceptions, of true and deserving womanhood. As we culturally define what a normal woman is, "African-American women are viewed as angry, masculine, domineering, strong and sexually permissive—characteristics which do not denote 'victim'" or normal woman.¹⁰² If a real or true deserving woman is seen as pious, pure, gentle, submissive, domestic, and middle class, "then a white woman is automatically more like the 'good' fairy tale princess stereotype than a black woman who as the 'other' may be seen as the 'bad' witch."¹⁰³ Therefore, labeling black women as strong has provided a disservice. For that label, without deeper observation, "ignore[s] the reality that to be strong in the face of oppression is not the same as overcoming oppression, that endurance is not to be confused with transformation."¹⁰⁴

To be honest, the law only prevents the "divorce" of "hardened" women but does not stop them from leaving the marital home for safety. However, if cultured white women are legally freed based on "minor" violence,¹⁰⁵ black women ought to be given the same freedom whether they are culturally similar or differently cultured or not cultured at all.¹⁰⁶

This continued negative stereotyping and devaluing of women who do not fit the image of the virtuous female deserving of protection brutalizes "other" women by leaving them legally tied to abusive situations and by possibly leading them to internalize this brutalization or brutalize others.¹⁰⁷ The best example of this internal and external brutalization is seen in the honest and real world of literature. In Toni Morrison's book, *The Bluest Eye*, one of the little black girl characters makes this confession:

I destroyed white baby dolls. But the dismembering of dolls was not the true horror. The truly horrifying thing was the transference of the same impulses to little white girls . . . To discover what eluded me: the secret of the magic they weaved on others. What made people look at them and say, "Awwwww," but not for me?¹⁰⁸

102. Moore, *supra* note 89, at 302-03.

103. Allard, *supra* note 101, at 193-94; *see also* Moore, *supra* note 89, at 324.

104. Hooks, *supra* note 2, at 6.

105. *See Faries v. Faries*, 607 So. 2d 1204, 1209 (Miss. 1992).

106. As one black woman has stated so well, "I refuse to be judged by the values of another culture. I am a black woman and I will stand as best as I can in that imagery." ALICE WALKER, *IN SEARCH OF OUR MOTHERS' GARDENS* 2 (1983) (quoting BERNICE REAGON, *BLACK WOMEN AND LIBERATION MOVEMENTS*).

107. Horsburgh, *supra* note 66, at 207.

108. TONI MORRISON, *THE BLUEST EYE* 22 (1970).

An evasive answer to the character's piercing question is that the same thing that will make judges set them free but not you. In *The Bluest Eye*, Pecola, another little black girl, wishes for "blue eyes" because she thinks that then she will be like the little white girls and will have a happier life.¹⁰⁹ Under the present laws and the present movement of the law, it is a sad commentary if one's accidental inheritance of blue eyes could mean the difference between suffering and freedom.

But these "delicate, virtuous women" whom the law seeks to save from even "minor" abuse are not the enemy. The enemies are those who will use unenlightened laws and legal and societal mores to continue to perpetuate domination and supremacy that make "refined" women deserving, but not women like Mem and girls like Pecola. Consider the thoughts of another character from *The Bluest Eye* as she responds to an ugly verbal attack from a little white girl named Maureen:

We were sinking under the wisdom, accuracy, and relevance of Maureen's last words. If she was cute . . . then we were not. And what did that mean? We were lesser. Nicier, brighter, but lesser . . . And all the time we knew that Maureen Peal was not the enemy and not worthy of such intense hatred. The *Thing* to fear was the *Thing* that made her beautiful, and not us.¹¹⁰

These unenlightened laws and movements, therefore, are potentially a real death sentence for black women. Arguably a black woman can still "leave" the violent home, she just may be unable to obtain a divorce. This point of view is especially troublesome, for to leave¹¹¹ but still be legally bound, along with all the other pressures to return to the home and man, could force her back into a situation¹¹² that is as real as the fate of Mem. Black women already have a tremendous amount of pressure imposed both internally and externally to return to the relationship. Like white women, black women are susceptible to the emphasis placed on maintaining the structure and

109. *Id.* at 44-46, 173-74.

110. *Id.* at 74. *Cf. id.* at 124-25 (where one character contrasts difference in how she was treated while giving birth to a child (she was treated like a horse and thought to feel no pain) with the kind, gentle sympathetic way the white women in labor were regarded.).

111. In addition, it is just a myth that a battered woman can always easily leave the home. See L. WALKER, *supra* note 6, at 29-30. Furthermore, a black woman's ability to leave may be hampered further by race and class issues. See Crenshaw, *supra* note 57, at 1242.

112. Conversations with some women who were abused reveal that some women, even many years after getting free, are troubled by intense nightmares that they are back "home" and being abused again.

“sanctity” of the family unit. In addition, black women are well aware of the prison of racism and are protective of the images of their men. They are hesitant to name the violence and call attention to problems in their relationships evolving from sexism.¹¹³ Protective of their homes, which are a necessary haven¹¹⁴ from societal racism, black women may be reluctant to call the police for help—the same police who may be hostile towards them, their families, and communities.¹¹⁵ The black woman, therefore, sees explanations for her man’s behavior based on the indignities he suffers from greater society. It is difficult, therefore, for her to name the violence because she is afraid she will be seen as betraying her already oppressed race.

The intent, though, is not to further point fingers at black men. Black malehood is not the enemy.¹¹⁶ The enemy is the system of supremacy and domination that establishes the pecking order (of whiteness then nonwhiteness, maleness then femaleness) that keeps us trying to excel by keeping others under foot. Although some white women fare better than black women under the law, they are not the enemy either. Although some black men (just like white men) abuse, they are not the enemy. The enemy is deeper and is cored in supremacy, patriarchy, and their manifestations—the need for structural appearance over true sanctity.

D. Shining the Light More Broadly—Illuminating the Law’s Oppression of Other Outsider Women

When the laws state that cultured women cannot take much abuse, this likely refers to cultured white women. Like black women, other outsider women may also remain bound by the law and custom to abusive relationships.¹¹⁷

113. CHAPMAN, *supra* note 78, at 16, 17, 19 (“Black men have gotten away with their sexist behavior because they have successfully kept our focus on racism.”).

114. Even if, for abusive marriages, the havens are far from being heaven.

115. See WHITE, *supra* note 4, at 18-20, 23-24; Belvie Rooks, *Holding on and Remembering in LIFE NOTES: PERSONAL WRITINGS BY CONTEMPORARY BLACK WOMEN* 266 (Patricia Bell-Scott ed., 1994) (sharing fear of black women to just name the violence). Even here, examining life, it is difficult for this writer to discuss violence in the black home.

116. For an enlightened and interesting perspective from an African-American male scholar on domestic violence, see Steven H. Hobbs, *Gender and Racial Stereotypes, Family Law, and the Black Family: Harpo’s Blues*, 4 INT’L. REV. COMP. PUB. POL. 35 (1992); see also Elizabeth M. Iglesias, *Rape, Race, and Representation: The Power of Discourse, Discourses of Power and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 869, 960-61 (1996) (discussing Hobbs’s rejection of the “controlling man” for an image of a “do-right kind of man”).

117. See NiCARTHY & DAVIDSON, *supra* note 57, at 17.

Jewish women, like black women, for example, already may experience both shame and hostility for exposing marital abuse.¹¹⁸ Jewish communities resist exposing this violence for fear that they will further experience the “negative anti-Semitic image.”¹¹⁹ In addition, their marriages are burdened by racial and religious prejudices. “The Jewish wife or girlfriend is also the scapegoat for the rage and frustration a man feels as a member of a minority group, an anger that he cannot ventilate in public. Even worse, Jewish women tend to internalize their negative stereotyping and learn to hate themselves.”¹²⁰ Even if a Jewish woman can obtain a civil legal divorce, she may be unable to obtain a divorce under Jewish law.¹²¹ This rabbinical [in]justice is just a continued expression of patriarchy and societal norms to oppress women and keep them in their “place.”¹²² The “law” generally refuses to intervene, acknowledge, and rectify the peculiar binds that keep Jewish women bound to abusive mates. One writer states that “[r]especting religious faith under the Establishment Clause should not grant men the right to keep women in dead marriages [or almost dead women in marriages]. By failing to act, courts privilege criminal assaults in the name of private religious freedom.”¹²³ Jewish Mems, therefore, with the assistance of the law, find themselves, like black Mems, bound “until death do they part.”

Immigrant women may also be bound to abusive mates or risk deportation under the law. Although a domestic violence waiver is available under the law, “[c]ultural identity and class affect the likelihood that a battered spouse could take advantage of the waiver.”¹²⁴ Socially or economically disadvantaged women are least able to have the resources to satisfy the waiver requirements. Those immigrant women who must then stay with abusive mates or risk deportation are often immigrant women of color.¹²⁵

Also similar to black Mems, are Pacific-Asian Mems. In the Pacific-Asian community, efforts to name domestic violence are viewed as attacks on the community “that threaten group pride,”¹²⁶ and “sav-

118. Horsburgh, *supra* note 66, at 171.

119. *Id.* at 211.

120. *Id.* at 207; *see also id.* at 210.

121. *Id.* at 177-78.

122. *Id.* at 178.

123. *Id.* at 197-98.

124. Crenshaw, *supra* note 57, at 1250.

125. *Id.*

126. Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311, 1313 (1991).

ing the honor of the family from shame is a priority.”¹²⁷ When the community acknowledges domestic violence, it sees the violence as a response to social factors and the men as victims.¹²⁸ One scholar tells of a Homong man who kidnapped and raped a woman and defended himself in the courts using a defense of “marriage by capture,” an acceptable way of obtaining a bride in his culture.¹²⁹ In another case, a Chinese immigrant received only a sentence of five years probation for beating his wife to death with a hammer.¹³⁰ The judge explained that the different “Chinese culture” helped explain the man’s behavior.¹³¹ In all these instances, the court’s assessment of culture led it to conclude that somehow those women were not entitled to the same type of treatment of similarly situated white women. More specifically, the court concluded that the women’s cultural backgrounds did not entitle them to be viewed as victims:

In both cases, the women suffered terribly, yet were not seen as victims, either by their native cultures, which allowed both the rapist and the killer to explain away their actions as culturally acceptable, or by the American courts that accepted the assailants’ defenses. . . . [B]oth rape and killing had become “victimless crimes” decriminalized by a “cultural defense.”¹³²

In a sense the law, as discussed in this article, is supporting a cultural defense to divorce, i.e., the abuse would have been grounds for divorce but the woman is not highly cultured or of a sensitive enough nature. This defense operates as an excuse for an act that is probably criminal but should have been at least sufficient grounds to allow a woman to obtain a divorce.¹³³ Although the law is extremely oppressive of black women and other non-white women, it also may operate against poor and working class white women being subjected to domestic violence. The whole law and movement protects only what it

127. Crenshaw, *supra* note 57, at 1257 (discussing Rimonte’s work, *supra* note 126). A better way to save these families from shame is to teach men not to be violent, instead of teaching “women not to scream.” *Id.*

128. Rimonte, *supra* note 126, at 1314.

129. *Id.* at 1311.

130. *Id.*

131. *Id.*

132. *Id.* at 1312. Other judges have also urged for leniency in criminal sentencing for rape where the defendants are from other cultures and their “acts . . . may have been set in motion by misjudgment about the mores of a new culture and misreading the signals of its women.” See *Wisconsin v. Curbello-Rodriguez*, 351 N.W.2d 758, 770 (Wis. Ct. App. 1984).

133. Goldstein, *supra* note 74, at 155. See *id.* at 161 (Consider the statement by a scared Chinese woman, “Even thinking about it makes me afraid. My husband has told me: ‘If this is the kind of sentence you get for killing your wife, I could do anything to you. I have the money for a good attorney.’”).

determines to be deserving, virtuous women and leaves the "other" women tied to the marriage, just like Mem, for the remainder of their lives.

V. CONCLUSION—AN ENLIGHTENED LAW, LIFE, AND LITERATURE

The idea that women have a place and should be kept in that place is furthered by the law and the movement to keep women bound in the structure of marriage unless they can prove good grounds and worthiness. These "family matters" need to be seen as "part of a broad-scale system of domination that affects women as a class."¹³⁴ The system restricts the freedom of women in order to preserve the structure of the family unit. Only the appearance and the structure are preserved, however, as the true elements of family (love, trust, companionship, etc.) have long ago faded. Individual needs, safety, and well-being are, therefore, forfeited and subordinated, while the family unit is preserved regardless of its malfunction or dysfunction.

The law desires to protect a family unit built on sexist notions that the one with the greater physical strength or power (or willingness to use that strength or power to control) is entitled to continue the marriage, regardless of the harm. One scholar states:

[D]omestic violence has its roots in power imbalances. . . . [T]hose who are in pain do not have as much power, and are not likely to be heard, as those who visit pain. To change the laws, to change attitudes, though, it must be the powerless, the abused we strain to hear.¹³⁵

The present legal scheme, however, visits even more pain upon the powerless. As it suggests that those who have received the harshest treatment by the law and society are so "hardened" by this treatment that they "deserve" to stay in present abusive marriages and receive even more pain. These notions are absurd as they potentially impose this system of household domination *more* on black households and other non-white households than on white households. They are absurd because, before the black community succumbed to white societal notions, the black community was built on shared

134. Crenshaw, *supra* note 57, at 1241.

135. Burnstein, *supra* note 69, at 970.

power within the marriage, not marital subjugation by virtue only of physical strength.

The law and movement suggest that women not recognized by society as “delicate” are legitimately victims of abuse.

[Some scholars] have defined “legitimate victims” as those individuals who are seen as having little or no reason to complain about their victimization because they belong to an inferior social class: Inferior social status often is the deciding factor in determining who is a “legitimate” victim. Therefore, lower class individuals, racial minorities, and females are more “legitimate” and deserving [of the abuse] when they are victimized in connection with their marginality and inferiority That is, the social status of the victims or (more accurately) the attributes imputed to them, justifies their victimization. According to this perverse logic, where there is no victim, there is no crime; persons of low social status “deserve” punishment and cannot be victims; therefore, violence against them is not a crime, and the perpetrators cannot be criminals.¹³⁶

Similarly, this abusive treatment is not grounds for divorce, and the perpetrators are entitled to keep the victims locked into a relationship where they may even be subjected to an escalation of abuse.

The effect of the law and movement is that they sanction abuse in “certain” homes where the wives are deemed lacking in “true womanhood” (softness, delicacy, culture, sensitivity). The result is a society that continues to frown upon violence against “true women” while it allows and encourages violence against the “other” women. In a sense, it is slavery all over again because “all women” are potentially bound unless they can prove themselves true and delicate women entitled to good treatment and undeserving of even minor abuse. Consequently, a few white women will be found deserving of better treatment, while most (if not all) black women will not. And, as long as these black women are bound to household abuse, they are more susceptible to all abuses of power including racism and workplace sexism. Women cannot really focus on changing the world when every evening at home is a survival test. Thus black women, once again, are hindered from being movers and shakers of the world.¹³⁷

136. Rimonte, *supra* note 126, at 1316 (internal quotations omitted).

137. Consider the following words from a former victim of spousal abuse, “My message here . . . is . . . whatever is bringing you down, get rid of it. Because you’ll find that when you’re free, your true creativity, your true self comes out.” TINA TURNER, I, TINA 247-48 (1986).

I hope I am not misunderstood. I am in favor of saving families. However, more importantly, I am in favor of saving families and individuals from abuse.

The question is, how can a change be introduced into the culture? One major way, I believe, lies in the consistent and uncompromising application of United States laws that proscribe violence. The application of these laws must not [limit] which persons are to be protected by such laws. . . . Rather they must afford all women the same protection, regardless of culture or circumstance.¹³⁸

Families can be saved by illuminating the core of the problems that destroy them. Violence should no longer be acceptable in our society, whether it happens behind closed doors or on the street corners. Supremacist notions—racist, sexist, and classist—must be exposed and eradicated. Our society needs to be more friendly toward families by providing health care and suitable child care. Unemployment, underemployment, and workplace discrimination that keep spouses stressed about work (and likely stressed when they come home, too) need to be addressed honestly. In the meanwhile, all women (be they viewed as delicate and favored by the laws or viewed as hardened and undeserving under the law) need to claim for themselves lives free of abuse.¹³⁹

Law, Life, and Literature. Unless the stories of Mem from life and literature illuminate the laws and the conservative movement, the same thing that happened to Mem is going to happen to so many others. And that's just not right. Let us set all the Mem's free . . . for in freeing them, perhaps, we also free ourselves.

138. Rimonte, *supra* note 126, at 1326.

139. If you are in an abusive relationship, get help. Look in a phone book for hotlines and shelters or for your state's chapter of the National Coalition Against Domestic Violence or some other group that will help you. You can get free, in spite of the laws, and you are deserving of freedom from abuse. This Mem got free. And, you can, too.