U.S. DOMESTIC VIOLENCE LEGISLATION AND THE APPLICATION OF CATHOLIC SOCIAL JUSTICE THEORY

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ABSTRACT

Recent changes to societal views on domestic violence have lead to more advanced domestic violence legislation. The Catholic Church has been a part of these evolving views. However, domestic violence still remains prevalent throughout American society, permeating all races, religions, and socioeconomic backgrounds. This paper will examine the history of domestic violence legislation and society’s perception of domestic violence. It will then examine both federal and state policy alternatives dealing with domestic violence, and apply Church teachings on Social Justice to the different alternatives. Focusing specifically on the Violence Against Women Act and on state arrest policies.

THE PROBLEM

Domestic violence is a pervasive problem affecting American society as a whole. The United States Department of Justice defines domestic violence as, “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner” (“Domestic violence”). The National Coalition Against Domestic Violence estimates that 1 in 4 women will experience domestic violence in her lifetime; an estimated 1.3 million women are victims of physical intimate partner violence each year. The most extreme cases of domestic violence can result in death, and it is estimated that one third of all female homicide victims are killed by an intimate partner. While a majority of victims of domestic violence are female, males can be victims as well. Domestic violence is not bias to one gender, race, or socioeconomic status, instead it permeates over all factors. ("Domestic Violence Facts")
However, an overwhelming majority of domestic violence victims are female, therefore while recognizing that males are also victims, this paper will often use feminine pronouns and specifically address the effects on female victims.

Domestic abuse is potentially one of the most damaging types of violence, as it affects not just the victim, but also the family and society as a whole. In regards to its effects on the family, domestic violence can be very damaging to the children who witness the abuse. It is estimated that every year 3.3 million to 10 million children are exposed to domestic violence at home. (Moylan et al. 53). A correlation can also be seen between domestic violence and child abuse. Recent studies have shown the co-occurrence of domestic violence and child abuse to range from 30-50% of cases. (“The Relationship”) Not only are children at risk from the perpetrator of domestic violence, but women who are victims of domestic violence are twice as likely to physically abuse their children then non-abused women. (Dixon et al. 676). Children in domestic violence households are also at greater risks for sexual, physiological or emotional abuse, and neglect. Even in domestic violence cases where child abuse and neglect does not also occur, simply living in a domestic violence household can cause may negative effects on children. These include problems such as higher levels of aggression, anxiety, depression, poor peer relationships, poor school performance, lower cognitive functioning and increased tolerance for violence. (Bragg 2). In fact, the effects of children witnessing intimate partner violence can be so negative, that some argue that the very act of living in a domestic violence household should be considered a form of child abuse and neglect.

The negative effects of domestic violence on children in the family can clearly be seen in numerous studies, and society now recognizes the need to protect children from abusive and neglectful environments. However, the impact of domestic violence expands even further than
just the victim and their family. Instead, domestic violence is something, which affects society as a whole, moving it from a private issue to a public issue that must be regulated. If nothing else, domestic violence places a great economic burden on society. The National Coalition Against Domestic Violence argues “the cost of intimate partner violence exceeds $5.8 billion each year, $4.1 billion of which is for direct medical and mental health services” (“Domestic Violence Facts”). These statistics allude to the impact that domestic violence has on the health care system. This can be seen in the emergency rooms where it is estimated that between 12-35 percent of women who are seen with injuries are there as a result of domestic abuse. Society incurs an even further burden on its system when viewing the correlation between domestic violence and homelessness. It is estimated that 27-41 percent of women are homeless as a result of intimate partner violence. (Crowell and Burgess 88).

The government is not the only entity being economically burdened due to domestic violence, many corporations and employers are negatively impacted by domestic violence as well. In a year, it is estimated that, “Victims of intimate partner violence lost almost 8 million days of paid work because of the violence perpetrated against them….This loss is equivalent of more than 32,000 full-time jobs and almost 5.6 million days of household productivity as a result of violence” (“Domestic Violence Facts”). One study, conducted in New York City estimated that 56% of domestic violence victims had lost a job due to the abuse, and 75% had been harassed by the abusive individual while at work. (Crowell and Burgess 88). The negative impacts of domestic violence can take a toll on the workplace, and further emphasize that domestic abuse is not simply a private matter.
Social Justice Theory and the Church’s Response to Domestic Violence

The United States Conference of Catholic Bishops (USCCB) first formally addressed domestic violence in 1992. They most recently updated that statement in 2002 with “When I Call for Help: A Pastoral Response to Domestic Violence Against Women”.

…we state as clearly and strongly as we can that violence against women, inside or outside the home, is never justified. Violence in any form “—physical, sexual, psychological, or verbal”—is sinful; often, it is a crime as well. We have called for a moral revolution to replace a culture of violence.

In this address, the Bishops recognized that addressing domestic violence was not simply a duty of the State, but was the duty of the Church as well.

Many points that the Bishops address echo themes of the Catholic Church’s teachings on social justice theory. The theory of social justice is outlined in the Catechism of the Catholic Church. It reads that, “Society ensures social justice when it provides the conditions that allow associations or individuals to obtain what is their due, according to their nature and their vocation. Social justice is linked to the common good and exercise of authority” (“Catechism”). Under this category, there are three main ideals of social justice theory: respect for the human person, equality and differences among men, and human solidarity. While “respect for the human person” most obviously applies to the topic, all three ideas pertain and are applicable to domestic violence. Social justice examines the interconnectedness of human beings, and how these interactions can best achieve the common good. ‘Respect for the human person considers the other ‘another self.’ It presupposes respect for the fundamental rights that flow from the
dignity intrinsic of the person‖ (Catechism) Therefore social justice is tied to what the Church perceives as inherent human rights, one of these human rights is a life free of violence.

This application of human rights and human dignity was addressed by Pope Benedict XVI in his address at the 23rd World Youth Day:

Do we recognize that the innate dignity of every individual rests on his or deepest identity – as image of the Creator – and therefore that human rights are universal, based on natural law, and not something dependent upon negotiation or patronage, let alone compromise?...How can it be that domestic violence torments so many mothers and children? (Benedict)

Pope Benedict continues on to point out that these questions are vital to humanity; however they cannot be separated from questions of morality. He argues that non-violence and justice and peace are ideals which should be strived towards. Under these ideals, domestic violence would not occur since it is a violation against human dignity. The USCCB emphasizes this point in their pastoral statements by noting that interpersonal violence “fails to treat that person as someone worthy of love. Instead, it treats the person as an object to be used” (“Call”). All these notions are comprised in the social justice teaching, and become vital in determining the position the Catholic Church will take when it comes to domestic violence legislation.

**History of Domestic Violence Legislation**

While domestic violence has been present throughout history, domestic violence legislation is something that is still relatively new in America and other parts of the world. In the beginnings of this country, Anglo-American common law dictated that a husband had the right to
"chastise" his wife, in other words, he was allowed to use corporal punishment as long as he did not inflict permanent damage. "The rampant violence imposed upon wives in Europe carried over into American culture, aided by legal precedents. During one period a husband was permitted by law to beat his wife so long as his weaponry was not bigger around than his thumb" (Flowers 15). This was not a new idea; it was one present throughout history, enforced by different societies, governments, and religions. "The notion of the nearly limitless right of the husband as undisputed leader of the family, and father-family relationships defined as proprietary interest can be traced to the doctrines of such ancient civilizations as Babylonia, Greece, and Rome" (Flowers 15). The one major exception to this standard was in Puritan colonies, which prohibited wife abuse. They saw it as a threat to the order and stability of the community. However, even their laws were not always enforced, and they focused solely on reconciliation and keeping the family together. (Schneider 14)

This resistance against domestic violence legislation stems from the on-going conflict between the public and private sector. There has always been a great deal of resistance to what is seen as government intervention in the home or the family, as those are perceived as private areas. Therefore, domestic violence has often been argued to be a private issue, something that should be resolved within the family without any outside interference. It was not until more recently in American history, that individuals began to argue that domestic violence does not simply affect the family, but instead affects society as a whole and therefore warrants government intervention.

The progression of the domestic violence movement in America can be linked very closely with the women's rights movement and the feminist movement. Two early examples can be found in the temperance movement and the women's rights movement's denouncement of
common law marriage doctrines. The temperance movement saw a causal relationship between alcohol and domestic violence, and used stories of abuse as evidence towards their argument. While the women's movement argued that a woman's legal status in regards to marriage did not grant her any protection from abuse, but rather made her more vulnerable to domestic violence. "Women's rights advocates protested the hierarchical structure of marriage; and, as they did so, they attacked the chastisement prerogative as a practical and symbolic embodiment of the husband's authority over his wife" (Schneider 15). This was one of the major differences between the temperance movement and the women's rights movement. The temperance movement saw battering as a side affect of drinking, and therefore, believed in a large part that it could be solved through the imposing of temperance. The women's movement, on the other hand, saw domestic violence as a result of a defective legal marriage structure, and therefore believed that it could only be cured through a change in patriarchal laws.

As both movements started to take hold, public sentiment also began to shift and by the late 19th century, states no longer recognized a husband's right to chastise his wife. Alabama became the first State to legally rescind the right of men to beat their wives. (“History”) Domestic violence perpetrators began to be charged with battery and assault, even in cases where the wife was considered drunk or insolent (previously seen as cause for chastisement). Some courts went so far as to acknowledge that a husband and wife were equal. Even though the justice system no longer saw wife beating as a right and it was for almost all intents and purposes illegal, the system still offered little recourse and protection for victims.

Women of the social elite might escape husbands who beat them by obtaining a divorce, if they were not deemed blameworthy, and if they were willing to subject themselves and their children to the economic perils and social stigma associated
with single motherhood. Women of poorer families might have a husband fined, incarcerated or perhaps even flogged, if they were willing to turn him over to a racially hostile criminal justice system. The law thus provided relief to some battered wives, but the majority had little recourse against abusive husbands (Schneider 17).

While criminalization was a step in the right direction, it clearly was still not the ideal solution to the issue of domestic violence.

The changing legal codes corresponded with a shifting mentality about the marriage relationship. The marital relationship was previously viewed as a hierarchy, with the wife subordinate to the husband. Now, however, as judges were recognizing the husband and wife as equal, the marital relationship was viewed more as a collaborative effort. While this was beneficial to women in many ways, it also lead many to argue that domestic violence was now a private issue that involved no outside interference. Since the husband and wife were now equal, they should be able to solve these disputes privately, and behind closed doors. The main focus during this time was on family reconciliation. While the husband could be legally punished to show that he did not have the right to beat his wife, the family was then expected to forgive, forget, and move forward. Divorce was rarely ever seen as the option to take. “Courts discouraged separation and divorce, sometimes even to the point of judicial coercion of abuse victims: badgering wives into withdrawing complaints, denying their petitions for financial support from husbands, or assigning cases to a social service organization” (Schneider 19). Instead it was believed that abusers could be ‘cured’ and therefore families simply had to work through the hard times and strive to stay together.
These ideas are still changing, especially with the help of the Catholic Church. While many victims still operate under the misconception that they should stay in the relationship at all costs, the Church states that this is simply not true. The Bishops argue that when victims believe they cannot leave an abusive marriage because the Bible says it is wrong, they are operating under a distortion of scripture usually used by abusive individuals to rationalize their actions.

We emphasize that no person is expected to stay in an abusive marriage….Violence and abuse, not divorce, break up a marriage. We encouraged abused persons who have divorced to investigate the possibility of seeking an annulment. An annulment, which determines that marriage bond is not valid, can frequently open the door to healing. (“Call” 5).

This declaration by the USCCB is vital as it overcomes a major barrier, that in the past, prevented many victims from escaping abusive and harmful relationships.

Reforms

No new reforms to domestic violence legislation or the domestic violence movement really took place until the second wave of feminism in the 1960s. The correlation between the women’s rights movement and the domestic violence movement can be seen throughout history, and the revival of feminism was no exception, quickly taking up the cause of battered women. At first, the focus was not so much on legal reform, as domestic violence was already illegal, but rather on the safety and protection of victims of abuse. The first shelters for domestic violence victims began to be established in the early 1970s. These shelters started, as women began to discuss with one another the previously hidden and non-disclosed issues of the violence that was
perpetrated against them behind closed doors. The shelters were often founded around kitchen tables, and started with women simply allowing their neighbors to stay with them in order to escape abusive situations. They became communal spaces, where women could gather and share their experiences and support each other. “In this process, women were able to identify their shared experiences, moving away from explanations of violence as expressions of individual deviance and toward the social and cultural realities that supported widespread violence against women in their homes” (Renzetti et al. 246). These shelters focused largely on the idea of empowerment. They did not claim to be centers of therapy or counseling and even strayed from using terms such as “clients” to refer to the women they supported. Instead they focused on giving women the tools to make their own decisions and to gain their own independence. As the shelters began to expand and more women were in need of their help, they eventually shifted away from their roots as private organizations begun around the kitchen table, and instead began to look to the government for financial support. This inclusion of the government would lead to further reform in the domestic violence movement, and sometimes would even come in conflict with the original empowerment message and ideals of the feminists who began the first shelters.

Even as shelters were beginning to be established, domestic violence remained a topic that was only discussed in hushed tones. It was not really formally brought to the attention of the federal level until the Supreme Court case, *Planned Parenthood v. Casey*, which took place in 1992. On the surface, this case did not deal with the domestic violence issue. Instead the legal issue in question dealt with a Pennsylvania abortion statute. Included in this abortion statute was a provision which mandated “spousal notification” in order to an abortion to occur. Organizations advocating for domestic violence victims argued that this would be extremely dangerous for victims of intimate partner violence. In many cases of domestic violence,
pregnancy can often lead to an escalation in the violence and abuse. Advocates argued that women in abusive relationships who could not tell their partners they were pregnant for fear of harm, under this provision, could also not exercise their reproductive rights due to fear of harm. The Supreme Court ultimately ruled the provision to be unconstitutional largely because of this argument. In its holding, the Court described the issue of domestic violence and for the first time really presented the overwhelming statistics to show the pervasiveness of the problem. They acknowledged that not only was physical abusive a major problem, but that emotional, physiological, and economic abuse also existed. They also recognized that there were many different reasons that victims either could not leave or choose not to leave abusive relationships. Their holding on the specific mandatory spousal notification prevision was as follows:

Section 3209 embodies a view of marriage consonant with the common law status of married women, but repugnant to our present understanding of marriage and of the nature of the rights secured by the Constitution. Women do not lose their constitutionally protected liberty when they marry. The Constitution protects all individuals, male or female, married or unmarried, from the abuse of governmental power, even where that power is employed for the supposed benefit of a member of the individual's family. These considerations confirm our conclusion that 3209 is invalid. (Planned Parenthood).

The Court’s decision and recognition of the obstacles that domestic violence victims face would help to open the doors for federal legislation. While the Catholic Church would have disagreed overall with the ruling of this case as it is a strongly pro-life institution, also under its teachings of social justice, this was the first year the USCCB also publicly recognized the plight of victims of domestic violence in the United States.
The Violence Against Women Act

The current policy, at the federal level, which addresses domestic violence, came in the aftermath of the Court’s decision. The first Violence Against Women Act (VAWA) was originally passed in 1994. Senator, now Vice President, Joe Biden was one of the writers and sponsors of this Act which was introduced as part of the Violence Crime Control and Law Enforcement Act. It was the first US federal legislation that acknowledged both sexual assault and domestic violence as crimes, and provided funds in order to establish community resources to respond to the violence. This legislation established the National Domestic Violence Hotline, distributed resources to support safe houses and shelters for domestic violence victims and also developed coordinated community responses to domestic violence as well as sexual assault and stalking. (“History”) The Act created protection for Battered Immigrant Women, which would be expanded on in later versions, allowing them to file their own applications for immigrant relief without needing the cooperation of their spouse or the abusive individual. The 1994 version of the Act also allowed individuals to seek civil rights remedies when they were a victim of gender related crimes, however, the Supreme Court ruled this provision to be unconstitutional. (“Comparison”).

The Violence Against Women Act had two major areas that it tried to address. The first was criminal justice response to violence, and the second was access to services for victims. The criminal justice response provisions present in VAWA are extremely important, because before it was passed, many members of the criminal justice system were not adequately trained to deal with victims of domestic violence and therefore individuals were often re-victimized by the very
system which they turned to for help and protection. Funds from this act helped to train more than 500,000 law enforcement officers, prosecutors, judges, and other personnel each year. In some areas, the funding was even used to create specific courts or law enforcement units, which specialized in domestic violence cases. VAWA also required that no victim would have to pay the cost of acquiring a protection order, regardless of their income. Furthermore, it required that these protection orders would be recognized and enforced in all states and jurisdictions.

(“Overview”)

The next version of the act was passed in 2000, when VAWA was re-authorized through bipartisan efforts. This version of the bill pushed states to adopt mandatory arrest policies. These policies remove the discretion of the police officer when responding to incidents of domestic violence as the officer is required to arrest the primary aggressor. The act used grants and extra funding as incentives for states to adopt mandatory arrest policies. The 2000 version of the bill was very important in its changes to the resources available to immigrant victims. Under this act, two new categories of nonimmigrant visas were created. They were known as “T” visas and “U” visas. “T” visas are not particularly relevant to the issue of domestic violence as they are reserved for victims of trafficking. “U” visas, on the other hand, were visas for individuals working with the criminal justice system who are either victims or have information regarding domestic violence or other crimes. These visas provide nonimmigrant status, a path towards legal residency after 3 years, and work authorization. The Act also created important expansions when it came to Native American victims. The 2000 version granted tribal courts full civil jurisdiction to enforce protection orders. This version of the bill was also important as it authorized federal prosecution for interstate domestic violence or violation of a protection order. (“Comparison”)

The next reauthorization of the act, again through bipartisan efforts, came in 2005. One of the changes dealing with the criminal justice system’s response to domestic violence, was this version shifted away from mandatory arrest policies and instead encouraged states to adopt “pro-arrest” policies. In the area of battered immigrant women the bill expanded on the previous versions protections and resources. It also added both extreme cruelty and battery to the list of exceptional circumstances in deportation proceedings. This allowed certain victims to qualify for the visas and other protections from deportation that were established in the previous versions. The major shift in the 2005 version came from the bill not only focusing on reactionary measures and services, but it also began to provide funding for Analysis and Research. A portion of this funding dealt specifically with Violence against Indian women and evaluating the tribal, state, and federal responses to it. This research would be conducted by a task force of which, “representatives must come from: (1) national tribal domestic violence and sexual assault nonprofit organizations; (2) tribal governments; and (3) national tribal organizations” (“Comparison”) The 2005 version of the bill also granted funding for employers and work places to establish responses to domestic violence.

Current Legislation

The most recent version of the Violence Against Women Act was signed into law by President Obama on March 7 of this year. However, this bill was not passed as smoothly or with as much bipartisan support as in the past. Instead it took over a year of considerations and arguments which ultimately lead to VAWA expiring for the first time since its passing in 1994. There were two sides to this debate that must be evaluated. Many proponents reauthorization of
the act argue that it has been the most effective federal response to the issues of violence against women. However, they argue that the statistics show that the passing of the bill has not only been beneficial to female victims, but to victims of interpersonal violence as a whole.

The number of women killed by intimate partners decreased by 35 percent between 1993 – the year before the act’s passage – and 2008, and nonfatal violent acts against women by intimate partners decreased by 53 percent. During the same period, the number of men killed by intimate partners decreased by 46 percent, and the number of nonfatal violent acts against men by intimate partners dropped by 54 percent. (McMillion 2)

Other proponents argue that VAWA has also been beneficial economically. In their article, “A Cost-Benefit Analysis of the Violence Against Women Act of 1994”, Clark, Biddle, and Martin found that in its first 6 years after becoming law, VAWA saved an estimated $14.8 billion in social costs. (422).

Though there are some who disagree with VAWA in its entirety, the main policy problems stemmed more from a debate about which version of the bill should have been passed. Congress began looking at the reauthorization of the bill in the end of 2011, but it came up for debate and voting in the spring of 2012. A version of the bill was presented to the Senate that had been, as with past versions of the bill, written with bipartisan support. The Senate version of the bill’s two main writers and cosponsors were Senator Patrick Leahy, a democrat from Vermont, and Senator Mike Crapo, a republican from Idaho. Advocates of domestic violence support this version of the bill. It is also supported by many specific victims interest groups, such as LGBT advocates, and advocates for immigrant and Native American victims. In regards to the split in congress, the Senate Version of the bill has almost the full support of the
Democratic party as well as the support of the white house. (Leahy) Sandy Adams, a first term republican representative from Florida, presented the House version of the bill. The support for the House bill was split almost straight down party lines, with 23 republicans voting against it, and six democrats voting for the bill. The House version of the bill aims to prevent expansions and additions to the bill which they see solely as the democrats attempt to politicize the issue. Republicans argue that they are in full support of VAWA, but only the VAWA that adhere to the original intents. The House version would also make a major change to the act; it would eliminate its use of women. Proponents of the house version argue that VAWA discriminates based on gender, and that the bill should focus on all victims of domestic violence, not just on female victims. (Bolduan).

The first policy option, the Senate version of the bill, as stated before would adhere very closely to previous versions of VAWA, though it would additionally expand on what many advocates argue are vital issues. One such controversial issue would be the expansion of VAWA to protect and service LGBT victims. Proponents of the changes argue that LGBT victims often do not receive the same protection and services as heterosexual victims, and therefore are often reluctant to come forward and report crimes. “LGBT victims are routinely turned away from shelters and denied protection orders. The Senate bill adds explicit antidiscrimination language; it also earmarks funds for LGBT focused organizations” (“Women at risk”). It should be noted that many shelters and organizations and do not discriminate based on sexual orientation. For example, the local domestic violence shelter, Turning Point of the Lehigh Valley, can accept transgendered individuals into shelter, as long as they identify as female. So while the expansion in the Senate version to include these victims may seem controversial or revolutionary, it is something that already exists, the act would simply unify these efforts across the board to make
services as non-discriminatory as possible. Opponents argue that democrats are simply trying to make the bill too expansive. They argue that if the definition of victim and who an receive services is constantly expanded than eventually the bill will not longer be able to protect and help the true victims which it was originally created to protect.

The second controversial point of this bill would be its expansion of protection for immigrant victims of domestic violence. The senate versions of the bill would expand the number of “U” visas available under VAWA. This additional number of visas that would be available would come from previously unused visas from the designated number of visas available in past years. Therefore, proponents argue that no new visas would really be introduced to the system, they would simply be recycling visas that were already authorized in past bi-partisan bills. Advocates argue that these visas are vital for immigrant victims of domestic violence. The abusers in relationships where one party is an immigrant often use that individual’s immigration status as a weapon of fear and a way to manipulate the victim. Victims often do not fully understand immigration laws, and therefore are scared to contact police or organizations for help, since the abusers have told them that if they do, they will be deported. These visas can only be granted by a specific immigration office, which specializes in working with immigrant domestic violence victims. Therefore, proponents argue, that these individuals are the best trained to scope out any fraud or abuse of the system. Also the fact that cooperation with police efforts is required for “U” visas cuts down on many instances of fraud. Opponents argue that there is a great deal of fraud and abuse in the awarding of “U” visas and in the self-petitioning process that was established under VAWA. Senator Charles Grassley, who opposes the Democrat’s Senate version of the bill, argues that the bill fails to reform these program, and instead chooses to ignore the evidence of fraud. (Grassley 176)
The third controversial issue deals with Native American victims of domestic violence, and the jurisdiction that tribal governments have when it comes to domestic violence cases and protection orders. The main provision in question is the one that includes, “tribal provisions empower tribal courts to prosecute crimes of domestic violence, dating violence, or violations of protection orders regardless of the race of the alleged abuser” (Akaka). This was created in response to the gray areas that often times surrounded who had jurisdiction in cases of violated protection orders and domestic violence when the victim was a Native American, but the abuser was not.

Proponents of the bill argue that Native American women are subjected to a higher risk of domestic violence than the national average. “Native women are 2 ½ more likely than other U.S. women to be battered or raped. These are extremely disturbing statistics. 39 percent of Native women will suffer domestic violence in their lifetime. That is more than one out of every three native women” (Akaka). However great the need is, supporters of the bill argue that the provisions are not new. Instead they are ideas that were first introduced in previously authorized versions of the bill, which were a result of bipartisan efforts and support. Supporter Amy Klobuchar, argues that all the bill truly does is give tribal courts concurrent jurisdiction with federal and state courts. The provision does not completely rob the federal and state courts of their jurisdiction. (175).

Opponents of this section of the bill argue that it is unconstitutional. One such opponent, republican Senator Jon Kyle from Arizona, argues that individuals without Indian ancestry cannot be a part of the tribe and therefore could not vote on the laws of the tribe, which would ultimately be what was held against them. Kyle believes that this is a violation of both the equal protection clause and of due process. Kyle argues that another part in this section of the bill
would allow tribes to bar certain non-Indians from tribal lands through issuing “exclusion orders”. He states that tribes could ultimately keep an individual from returning to his own land, since plots of land have been sold to individuals not of Indian descent, but in the lines of this law they would still be considered “tribal lands”. (178-179)

In defense of the afore mentioned provisions and of the senate versions of VAWA as a whole, co-sponsor and author Senator Leahy argues that this bill was a result of numerous combined efforts and therefore, had a great deal of combine support. “We listened to what the survivors, advocates, and law enforcement officers told us…what worked, what did not work, and what could be improved. Then we carefully drafted legislation to fit these needs and that is why our bill is supported by more than 1,000 organizations” (Leahy 173). He argues that this bill makes sure that no discrimination occurs, and that all victims receive the protection, help, and support that they require.

Opponents argue that during this time of economic crises, the Senate version of the bill simply is not economically viable; the federal government cannot afford the extra spending. Opponents such as Senator Coburn argue that there are duplications and overlaps present in VAWA and non-VAWA programs which are both operated under the DOJ and HHS. Coburn states that the federal government cannot continue to afford the VAWA grant programs without offsets. (191) These are valid critiques, however, they are critics that Senator Leahy took into account when writing the Senate version of the bill. For example, the bill does provide $660 million in grants each year; however, this is down from the $779 million per year in grants that were approved through the 2005 bi-partisan bill. Leahy recognizes the current economic situation and therefore makes cuts where they can be afforded and necessary. The bill also works to address some of the duplications and overlaps between VAWA and non VAWA
programs, so as to not overspend where it is unnecessary. The Senate version of the bill is economically possible, since it takes into account the current economic situation. VAWA has also been proved, as stated earlier in the paper, to save society from absorbing many costs, which would be associated with, these types of violence were a version of VAWA not in place.

The Senate version of VAWA was a politically viable option. This version of the bill had a large number and variety of supporters. It passed in the senate with a 68-31 vote, gaining some bipartisan support instead of being cut simply straight down party lines. (Bolduan) It was also very similar to past versions of VAWA that have been passed with a great deal of public support and a minimum amount of backlash. The only real political issues would come from the accusations that the Democratic Party included some provisions in order to politicize the issue and accuse the republicans of waging a war on women. In response, however, supporters could argue that the bill was written through bipartisan efforts, and also supported as a bipartisan bill.

The version of VAWA that passed in the House of Representatives was in many ways in contrast with the senate version. The House version took the opposite stance on all three controversial issues, which were previously discussed under the first policy. One of the major differences came in the provisions regarding victims who are immigrants, and the immigration policies that pertain to them. The House Version of the bill would eliminate the self-petitioning process. It would also allow the spouse of the immigrant a greater role and say in the immigration process, and would give them a greater chance to testify or submit evidence. The House version of the bill would also substantially decrease the amount of visas that are issued. All of these provisions were written in order to decrease and hopefully eliminate the fraud and abuse that is present when it comes to VAWA immigration policies.
However, advocates claimed that these provisions would be extremely harmful to immigrant victims. By eliminating the self-petitioning process and granting the spouse a greater role, it would only further subject the victim to the abusive individual’s control. This may keep victims in dangerous environments due to fear of deportation. Opponents argue that the bill calls for the word of the alleged abuser and the abused to be weighed against one another, “Just on the basis of that, a petition for independent legal status can be denied. I want to be very clear; this has nothing to do with illegal immigration. Anyone covered by this provision is already here legally.” (Capuano) Capuano goes on to argue that the provision for self-petition is one that was present in the first version of the bill in 1994, and has remained present throughout all authorizations, and therefore there is no credible reason presented to do away with it.

The house version of the bill also took the opposite stances on the LGBT and Native American positions. Supporters of the bill argue that to give the Tribal courts more jurisdictions in these cases would simply be unconstitutional, especially in the cases where the abuser is non-Indian. Therefore, the reauthorization of VAWA should stick simply to the provisions, which were granted in the previous acts. To grant any more would be unconstitutional and would violate due process. Supporters of the bill argued that any additional provisions dealing with LGBT are simply unnecessary, since the bill already covered all victims. Instead, individuals needed to be worried about over broadening the bill to the point that it would no longer be able to protect the victims, which it was initially intended to serve. Sandy Adams who presented the House version of the bill, and who is a former victim of domestic violence, claimed that the house version simply makes sense, and that any extra provisions would be unnecessary and were only a result of political motivation. Sandy stated, “I want to reauthorize it; I do not want to politicize it. The victims deserve better than that. Americans deserve better than that…Make no
mistake about it; this is a victim-centered bill that is all inclusive….without regard for race, ethnicity, sexual preference, or nationality” (Bolduan).

The policy is economically viable in the terms of costs to the federal government. The House bill would cut grants and provisions which lessens the over all cost on the government. However, the cuts may have not been economically viable in their support of shelters and other organizations. As happens with all cuts, individuals would have to be laid off and certain shelters would have to close their doors. Less shelters mean less services available to victims. A closed shelter may result in a victim becoming homeless or not receiving the care that they need. All of these factors could come back to result in increased societal cuts.

Political viability is where the House version lost most of its support. While it did pass in the House of Representatives, the bill passed by an extremely narrow margin. The vote count resulted in 222-205. This view was also split almost straight down party lines, and therefore had virtually no bipartisan support. While 6 democrats did cross lines to support the bill, 23 republicans joined with democrats against it. The White House also came out in opposition to the house bill, stating that if the house bill was ultimately the version that is presented, President Obama would veto it. The House version of the bill was also strongly opposed by a majority of advocate groups. Most importantly it is opposed by organizations such as the National Coalition Against Domestic Violence, the National Women’s Law Center, the American Bar Association, the NAACP, the Human Rights Campaign and the National Congress of American Indians. (Capuano). For all of those reasons, without modification, the House version of VAWA was really not politically viable in current American society.

The bill that ultimately passed was a compromise between the two versions, although it leaned more towards the original bill proposed in the Senate. When it comes to the three
controversial components that were at the center of the debate, the current VAWA incorporates two of them. It increases protections for Native American women and for victims in same sex relationships; however, it does not include the stronger protections for immigrant victims.

The USCCB’s response to the version of VAWA that was reauthorized could be foreseen through understanding of their belief in social justice. Since its original passing, the Catholic Church has been as strong proponent and advocate of the Violence Against Women Act. However, with the division in Congress that came about over the reauthorization debate, critics came from the Bishops as well. Which lead the Bishops to ultimately release a statement on March 6, after the passing of the new bill, identifying their concerns and explaining that they could not support the current version of the Act. This was a result of one of the controversial additions to the bill, the inclusion of same sex relationships.

All persons must be protected from violence, but codifying the classifications “sexual orientation” and “gender identity” as contained in S. 47 is problematic. These two classifications are unnecessary to establish the just protections due to all persons. They undermine the meaning and importance of sexual difference. They are unjustly exploited for the purposes of marriage redefinition, and marriage is the only institution that unites a man and a woman with each other and with any children born from their union. (“Joint Statement”)

While on its surface, this response may seem contradictory, it is a key component of social justice and the Church’s idea of human dignity that must be understood. In their statement on domestic violence, the USCCB emphasizes the inherent equal dignity of both men and women. They criticize the misinterpretation of scripture by some individuals in order to justify abusive behavior or domination over women.
Beginning with Genesis, Scripture teaches that women and men are created in God’s image. Jesus himself always respected the human dignity of women. Pope John Paul II reminds us that ‘Christ’s way of acting, the Gospel of his words and deeds, is a consistent protest against whatever offends the dignity of women. (“Call” 4)

However, while they emphasize the equality of human dignity between men and women, they distinguish that this does not mean that there are no differences between the sexes.

The Bishops are not proposing that domestic violence services, and other services to victims, be denied based on a victims sexual orientation. That would go against one of the very underlying principles of social justice:

The equality of men rests essentially on their dignity as persons and the rights that flow from it: Every form of social or cultural discrimination in fundamental personal rights on the grounds of sex, race, color, social conditions, language, or religion must be curbed and eradicated as incompatible with God’s design.

(“Catechism”)

Instead, it is based upon the other half of that component of social justice, which notes that the differences of individuals must be respected. “‘Male’ and ‘female’ differentiate two individuals of equal dignity, which does not however reflect a static equality, because the specificity of the female is different from the specificity of the male, and this difference in equality is enriching and indispensable for the harmony of life in society” (Compendium 80). The Bishops point out, which is also a point that some proponents of the senate version noted in original discussions, that individuals were already, in most cases, receiving services regardless of their sexual
orientation. The inclusion of this point in the bill was almost just a formality. The Bishops argue that the sole reason that this language was included by lawmakers was in an attempt to redefine marriage, instead of as a way to further help victims.

The other major concern that the USCCB had over the reauthorization of VAWA came not in the area of domestic violence, but instead in the area of human trafficking. Human trafficking is another area in which the social justice beliefs of the Church correlate closely with the response of the federal government. However, this is also another area where particular issues can interfere with cooperation between the government and social service programs of the Church. For years the Church provided services to victims of human trafficking, by receiving funding from the federal government under VAWA legislation. The USCCB ultimately lost its funding due to disagreements over abortion. Some law makers argued that funding should not be given to Church social service programs since they were not willing to provide victims of human trafficking with information on abortion and other services which were in conflict with their faith and beliefs.

The Senate’s decision to incorporate into S. 47 a title reauthorizing the Trafficking Victims Protection Act also raises concerns because this title omits language to protect the conscience rights of faith-based service providers to victims of human trafficking….Conscience protections are needed in this legislation to ensure that these service providers are not required to violate their bona fide religious beliefs as a condition for serving the needy. ("Joint Statement")
While this does not fall directly under the topic of domestic violence, it is important to note the divide that can occur between the State and the Church even when they hold very similar beliefs and desired outcomes in certain problem areas. These politicized issues may often keep services and help from victims who are in desperate need.

**State Policy Alternatives**

The policy alternatives at the state level regarding domestic violence legislation deal mostly with arrest policies. There are three different policy options that a state could impose regarding arrest in domestic violence situations: discretionary arrest, pro-arrest, and mandatory arrest. According to the American Bar Association, currently 21 states have discretionary arrest policies, 9 states have pro-arrest policies, and 21 states and the District of Columbia have mandatory arrest policies. Prosecution policies often go hand in hand with state arrest policies. Most specifically, no-drop policies are often present in the same states which implement mandatory arrest policies.

Mandatory arrest policies regarding domestic violence are exactly how the name sounds. If a police officer is called to a domestic dispute, they are mandated to arrest one of the parties, more specifically the abuser or aggressor. Many states adopted mandatory arrest policies after the Violence Against Women Act offered grants as incentives to the states that adopted them. If a mandatory arrest policy is to be enacted, then the state penal code must also allow for warrantless arrests. The two go hand-in-hand, first the state must create warrantless arrests for all misdemeanor crimes of domestic violence and then, the state must mandate arrest when officers have probable cause that domestic violence has occurred. (Bart and Moran 166) Early
studies dealing with mandatory arrest policies were very promising, showing that mandatory
arrest was an effective deterrent against future violence. However, attempts to repeat the studies
were often unsuccessful, and some argue that this deterrence simply does not exist. (Renzetti et
al. 202)

The problem with arrest policies is that often times the victim will be arrested as a result.
This can occur in two different forms: dual arrests and retaliatory arrests. Retaliatory arrests are
the less common of the two, however they can occur in situations where the abusive individual is
a powerful higher-income individual who has knowledge of, or connections with the criminal
justice system. In these cases, the abuser can convince the responding police office that either
just the victim should be arrested, or if the abuser is being arrested then he can convince the
officer that the victim deserves to be arrested as well. A legal review of retaliatory arrest cases,
“revealed that probable cause would not have been found in 57% of the retaliatory arrest cases
reported to the Helpline if further investigation as to the history of violence had been conducted
by the arresting officer” (Frye et al. 403). The more prevalent and, therefore, problematic of the
two, are dual arrests. Dual arrests occur when the responding officer mistakenly believes that
mutual abuse is occurring and therefore arrests both parties. A legal review, “revealed that in
60% of dual arrest cases there was information available indicating who the primary physical
aggressor was and that such an analysis could have prevented a victim arrest” (Frye et al. 403).

One of the main reasons that dual arrests can occur is as a result of the way in which
mandatory arrest policies are written. Mandatory arrest policies are often written in gender-
neutral language. Due to this language, battered women often find themselves arrested with their
perpetrators even through the evidence points towards the fact that they were acting out of self-
defense. (Schnieder 66). Many opponents of mandatory arrest laws point towards these
heightened rates of dual arrest as evidence of a major flaw in the mandatory arrest system. If women are unjustly arrested when they contact the police for protection, then this will lead to a decrease in trust and satisfaction with police officers and the criminal justice system. Therefore, woman will less likely to contact the police for protection in the future.

One of the ways to prevent high rates of dual arrests, if implementing the mandatory arrest policy, would be to increase the amount of training that police responders receive in dealing with domestic violence cases. If police officers were trained to look for the signs of red flags in abusers, or the signs of victim or abusive behavior, then they may be more likely to arrest the guilty party and avoid making an inappropriate dual arrest. The state must stress the need for extensive training for police officers and other actors in the criminal justice system, especially when it comes to identifying the primary aggressor, in order to prevent an increase in dual arrests in cases where mutual abuse is not present. Primary Aggressor statutes state that when police are making an arrest in a domestic violence situation they must first identify who is the primary aggressor. This prescription is a result of studies that have shown that often times in states that pass mandatory arrest laws, police are simply not willing to take the time to establish which individual is the abuser in cases where both parties show injuries (even though some were only inflicted as a result of self-defense). “Instead, in situations that appear to involve two mutual combatants, they opt to arrest both, leaving it up to the prosecutor, and perhaps the court, to determine culpability” (David Hirschiel et al. 296).

Another policy prescription that corresponds with mandatory arrest policies is no drop policies. These policies, instead of focusing on police involvement, focus on the prosecutor’s role in the case. No drop policies, like mandatory arrest policies, are an example of the discretion being taken out of a case. No drop policies can also be referred to as victimless
prosecutions. In states that have implemented a no drop policy, the prosecution can move forward with the trial and press charges against the abusive individual, even if the victim wishes for the charges to be dropped. Proponents of no drop policies argue that it is a way to show that domestic violence is not a private action, but instead a crime that affects society as a whole. By prosecuting, and leaving no discretion, the state is saying that domestic violence, is illegal and will not be tolerated.

Opponents of no drop policies argue that it can be harmful, especially to victims. This can be traced back to the very first shelters that were established on feminist ideals and the principal of empowerment. By not allowing a victim to decide whether or not to proceed forward, that victim is having their choice taken away from them, which is exactly what the abuser would do to them. The response of the Church to domestic violence echoes this idea of empowerment, though never specifically noting it in response to the legal setting. The Church recognizes that it is ultimately the decision of the victim as to whether or not they will leave the relationship; this idea of autonomy can be transferred to the decision to press charges. The USCCB reminds pastors that they must be mindful of this when counseling parishioners who are victims, since the risk factor increases greatly when a victim decides to leave the abusive relationship.

If a woman decides to leave she needs to have a safety plan, including the names and phone numbers of shelters and programs. Some victims may choose to stay at this time because it seems safer. Ultimately, abused women must make their own decisions about staying or leaving. (“Call” 4)

This same rational can be applied to mandatory arrest and no-drop policies. Ultimately, the victim is the person who knows their relationship and partner the best. They may know that an
arrest or legal action will only lead to heightened, or even life-threatening, violence. Therefore, it should be left up to the individual to make a decision that best protects their safety and self interest.

No drop policies, along with mandatory arrest policies, detract from victim autonomy. Often, no drop policies are ineffective as well, since victims will recant their previous testimony rather than having to testify against their partners at trial. No drop policies can also lead to “longer times for case processing, decreased victim satisfaction, and increases in pretrial crime.” (Renzetti et al. 203). Ultimately, at this time it is unclear whether no-drop policies are effective in preventing future abuse. When victims permitted to drop the charges were compared to victims not permitted to drop the charges, the results of future violence were found to be mixed. However, when compared to courts in which a no-drop policy did not exist, victims who chose to pursue prosecution were at a lower risk for recidivism then those who decided to drop the charges instead. (Smith 386).

The second type of arrest policy is a pro-arrest policy. This is the type of arrest policy that VAWA began to advocate for in its 2005 reauthorization, after the negative impacts of mandatory arrest policies started to be seen. Under pro-arrest statutes, the police officer still has the discretion to decide whether to make an arrest. However, that officer also knows that arrest is seen as the more effective and preferred response. Some argue that pro-arrest policies are more effective than mandatory arrest policies since they do not force an officer to feel like an arrest must occur, and therefore leaves the officer with the option of not making an arrest when they do not believe one is necessary, rather than a dual arrest occurring or just the victim being arrested as a result of their acting in self-defense. This type of arrest policy is associated with lower rates of dual arrests. This arrest policy would also be most conducive to social justice and
the Church’s previous responses to domestic violence. The USCCB notes that as first responders, clergy should not only have the goal of safety for the victim and children, but also of accountability for the abuser. A policy which prescribes that an arrest should be made when an abusive party can be distinguished protects the victims while also holding the abuser accountable for their actions. These policies show arrest as the preferred result, which is a way to show that domestic violence is a crime and will not be tolerated by society. This would be supported by social justice theory. “The movement towards the identification and proclamation of human rights is one of the most significant attempts to respond effectively to the inescapable demands of human dignity” (Compendium 84). Domestic violence is a violation of an individual’s human dignity and human rights, and therefore it is the duty of not only the Church, but society as a whole to show that it will not be tolerated.

The final type of arrest policy is Officer’s discretion policy. Unlike the two previously mentioned, this policy gives the police officer full discretion to act in the way which through experience, they believe to be most appropriate. Twenty-one states currently have officer discretion policy, including Pennsylvania. However, many still fear, that this type of policy leaves too much discretion in the hands of the police officer. First, there has been a bias throughout history against taking official action in cases, which occur, in the “private sphere”. Instead, officers will often just try to separate the couple for a cooling off period, or help them to work through their issues. Police officers often see domestic calls as low priority, or jobs simply given to the youngest guys or guys first starting out before they can work their way to better things. There also tends to be a higher rate of abusive individuals in the police department as a whole, since that type of job can be appealing to an abusive individual’s personality and need for
power. This can once again cause the police officer to have a bias and to react in a way that is not most beneficial for the victim or their safety.

**Recommended Policy**

This author’s recommended policy, incorporating Social Justice teaching, on the federal level, would be for a re-evaluation of the current Violence Against Women Act. As was stated in the USCCB’s Joint Statement after the recent passing of VAWA, it was vital that a piece of legislation was passed in order to continue funding of vital services and protection of victims. However, now that the legislation has been passed, Congress should revisit and re-evaluate some of the concerns. For instance, the stronger immigration policy that was present in the Senate version is necessary since immigrant victims can be the most vulnerable. Self-petitioning is necessary in order to protect these victims’ interests and remove them from underneath the control of their abusive partner. This policy should also not be controversial since it only applies to individuals who are legally in the country already, it does not open up any extra doors. That being said, I believe that “U” visas are also necessary. These visas encourage victims to cooperate with law enforcement officers and with the criminal justice system. A correlation can be tied to the way witnesses can be granted immunity if they are willing to work with the criminal justice system and testify against a defendant. This is accepted as valid and as a reward for cooperation, and therefore “U” visas should be viewed no differently.

Social justice teaching would support this expansion in order to ensure the protection of human dignity. This is true also when it comes to the protection of Native Americans, which the current legislation made major advances. However, these changes will have to be monitored,
because they do cause some hesitation. The reason being that one could perceive the Supreme Court ultimately dismissing this provision as unconstitutional. The opposition makes a valid point when it argues that this section could be a violation of the due process clause. By granting the Tribal courts jurisdiction over Non-Indians, one is essentially subjecting individuals to be tried and committed underneath laws that they did not help to elect. While this may not be the best policy option, it is an issue that must be looked at and resolved. Native women are at risk for domestic violence at a much higher rate than the average population. The perpetrator can often times be a Non-Indian and therefore they can escape without prosecution due to these legal grey areas. It must be established exactly which courts have jurisdiction when, in order to protect Native women and to prosecute the abusers.

To correspond with changes in federal legislation, pro-arrest policies should also be adopted in the states. Pro-arrest policies would lead to lower rates of dual arrests, while at the same time not leaving to much discretionary power in the hands of the police so that they simply choose not to act. They would best enable empowerment of victims, while at the same time giving a societal message that this violation of human rights and human dignity will not be tolerated. The best way to encourage states to enact pro-arrest policies would be to use incentives in VAWA. As was previously done in other reauthorization, the federal government should allot grants to states who adopt pro-arrest policies.

There are two criteria when it comes to the recommendation of pro-arrest policy. These two criteria are first, increased training of law enforcement official, and second a strong primary offender policy. In order for police to adequately yield their discretionary power when it comes to arrest, they must fully understand the characteristics of an abusive relationship. Law enforcement should also be highly training when it comes to identifying the primary offender.
This would help to lower the risk of dual arrests. If police take the time to examine the relationship, and investigate past incidences, then they should be able to determine which individual was the primary aggressor that would allow for fewer unjustified arrests.
WORKS CITED


