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## Lessons for the United States: A Greek Cypriot Model for Domestic Violence Law

Joan L. Neisser  
*Seton Hall University School of Law*

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LESSONS FOR THE UNITED STATES:  
A GREEK CYPRIOT MODEL FOR  
DOMESTIC VIOLENCE LAW

*Joan L. Neisser\**

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\* Associate Professor, Seton Hall University School of Law, J.D., 1984, Stanford Law School; B.A., 1970, Rutgers University. I would like to thank Angela Carmella, Catherine McCauliff, Eric Neisser, Charles Sullivan, and Stephanie Wildman for their helpful comments, and Susan Hutnik and Laura VanTassel for their excellent research assistance. I would also like to thank the many Greek Cypriot women and men who generously shared their time, knowledge, and experiences with me.

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## INTRODUCTION

In response to increasing awareness of the problem of domestic violence in the Republic of Cyprus,<sup>1</sup> the Greek Cypriot Parliament recently passed the Violence in the Family Law.<sup>2</sup> The most controversial issue raised by the new law is whether victims should be required to testify against their abusers.

This issue is also highly controversial in the United States. In a domestic violence case that recently received a great deal of publicity, a

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1. Although men can also be victims of domestic violence, the attention to this issue in the Republic of Cyprus has focused on domestic violence against women. Also, because I lived in the Greek Cypriot part of the island and had only limited contact with the Turkish part, this Article focuses only on the Greek Cypriot government's approach to this problem.

The island has been divided since 1974 when the Greek military junta attempted to overthrow the government of President Makarios. *See* Sir David Hunt, *Independence and Invasion*, in *FOOTPRINTS IN CYPRUS* 260, 269–71 (Sir David Hunt ed., 1982). The Turkish government then ordered its armed forces to intervene, with the first forces landing in the north of Cyprus on July 20. *See* Hunt, *supra*, at 270. After this interim government collapsed, President Makarios returned to Cyprus in December 1974 and resumed the Presidency, retaining that title until he died in 1977. *See* Hunt, *supra*, at 271. The area seized by Turkey, which remains under Turkish control, covers the greater part of northern Cyprus. *See* Hunt, *supra*, at 271.

Since the division of the island, talks have taken place between the Greek Cypriot and the Turkish Cypriot communities, usually with the help of the United Nations. *See* Hunt, *supra*, at 272. In 1983, Rauf Denktash, the Turkish Cypriot leader, declared that the Turkish-occupied section of the island was an independent country, the Turkish Republic of Northern Cyprus. *See* Hunt, *supra*, at 272. Only Turkey has recognized this declaration, which was condemned by the Security Council of the United Nations. *See* Hunt, *supra*, at 272. Discussions between the two communities, with an aim to working out their differences, have continued. *See* Hunt, *supra*, at 272.

2. The Violence in the Family (Prevention and Protection of Victims) Law, No. 47(I) (1994) (Cyprus).

prosecutor compelled Felicia Moon to testify against her husband, Minnesota Vikings football player Warren Moon.<sup>3</sup> Ms. Moon testified that she had started the fight with her husband and that he had "simply tried to restrain her and calm her down."<sup>4</sup> Mr. Moon was acquitted.<sup>5</sup>

The simultaneous prominence of this issue in the United States and in the Republic of Cyprus demonstrates that, despite the vast differences in our two societies, many of the issues pertaining to domestic violence are the same. In addition, it shows the challenge for feminist theory posed by the problem of compelling victims of domestic violence to testify against their abusers. Thus, the purpose of this Article is twofold: to view the problem of domestic violence victims not wishing to testify against their abusers through the lenses of different feminist perspectives;<sup>6</sup> and to use the Greek Cypriot experience as a model to test the value of these theories when developing legal policies addressing this issue.

Part I of the Article focuses on the American approach to the issue of domestic violence victims who do not wish to testify against their abusers. Part II discusses the Greek Cypriot approach to this issue, first providing the context—the role of women in Greek Cypriot society. Part III provides a brief summary of formal equality theory,<sup>7</sup> Catharine

3. See Clare Dalton & Elizabeth M. Schneider, *The Unwilling Witness*, N.Y. TIMES, Feb. 21, 1996, at A19.

4. Dalton & Schneider, *supra* note 3.

5. See Dalton & Schneider, *supra* note 3.

6. See, e.g., Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996). In her recent article, Hanna contends that feminist theory has three unresolved dichotomies—"private/public, particular/general, and victim/agent"—that prohibit it from providing a satisfactory solution to whether victims of domestic violence should be required to participate in domestic violence prosecutions. Hanna, *supra*, at 1885. Hanna suggests that pragmatism can help "resolve some of the lingering tensions" that result from the above dichotomies. See Hanna, *supra*, at 1886. Applying a combination of feminism and pragmatism, she argues that victims should be required to participate in domestic violence prosecutions, and when necessary be compelled to testify. Hanna, *supra*, at 1885-88.

While I agree with Hanna that her dichotomies raise difficult issues, the rich body of feminist scholarship discussed in this article dictates a different conclusion. See *infra* Parts III, IV.

7. As Katharine Bartlett states in *Gender Law*, categories of feminist thought "are not mutually exclusive. They have permeable boundaries and encompass multiple themes and modes of analysis. Moreover, they do not, in themselves, capture all of the rich diversity and creativity of this maturing area of legal study." Katharine T. Bartlett, *Gender Law*, 1 DUKE J. GENDER L. & POL'Y 1, 1 (1994) [hereinafter Bartlett, *Gender Law*]. Nonetheless, scholars such as Bartlett have created categories to "provide a

MacKinnon's nonsubordination theory,<sup>8</sup> and nonsubordination theory modified by the agency critique.<sup>9</sup> Finally, Part IV applies these theories

simplified structure for understanding the common questions posed in this field" Bartlett, *Gender Law*, *supra*, at 1.

I am using Bartlett's terminology when using the term "formal equality." She defines formal equality as "the familiar principle that individuals who are alike should be treated alike, according to their actual characteristics, rather than stereotypical assumptions." Bartlett, *Gender Law*, *supra*, at 2. She points out that advocates of this model "joined with their commitment to equal treatment a belief in the importance of autonomy and the desirability that both women and men be free to make their own choices, unconstrained by artificial barriers and prohibitions." Bartlett, *Gender Law*, *supra*, at 2.

Formal equality is frequently referred to as "liberal feminism." See, e.g., Christine A. Littleton, *Feminist Jurisprudence: The Difference Method Makes*, 41 STAN. L. REV. 751, 757 (1989) [hereinafter Littleton, *Feminist Jurisprudence*] (reviewing CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* (1987)).

8. I am again employing Katharine Bartlett's terminology. According to Bartlett, "[t]he nonsubordination perspective shifts the focus of attention from gender-based differences to the imbalance of power between women and men." Bartlett, *Gender Law*, *supra* note 7, at 6. Nonsubordination theory is also known as "dominance theory." See Bartlett, *Gender Law*, *supra* note 7, at 6.

I focus on Catharine MacKinnon's work because she is the "most well-known proponent" of nonsubordination theory. Bartlett, *Gender Law*, *supra* note 7, at 6. See also Frances Olsen, *Feminist Theory in Grand Style*, 89 COLUM. L. REV. 1147, 1147-48 (1989) (book review) ("It would be difficult to trace the overall effect MacKinnon has had on feminist legal theory, but it seems clear that her influence has been profound.").

9. I am using Kathryn Abrams' definition of "agency." In a recent article, she stated:

Although the term "agency" is generally used to denote something like knowing self-direction, I use it in this essay in a way that acknowledges an internal, as well as an external or outwardly-oriented, aspect to agency, and that highlights the oppressed circumstances of many who seek to exercise it. I use "agency" here to denote the ability to *develop* and *act on* conceptions of oneself that are not determined by dominant, oppressive conceptions.

Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304, 306 n.11 (1995) [hereinafter Abrams, *Sex Wars Redux*].

I am also using Abrams' terminology when referring to the "agency critique." As Part III of this article discusses, Abrams divides the agency critique into two strands—the popular critique and the academic critique. See Abrams, *Sex Wars Redux*, *supra*, at 329-46. When describing the critique of academics, she states:

Like their popular counterparts, they have been concerned with the depiction of agency that extends beyond the realm of the sexual. Yet, for the most part, the academic critics have been less antagonistic toward the basic message of dominance feminism. They have sought to describe a subject whose agency emerges against the backdrop of, and co-exists in tension with, systematic gender-based oppression.

Abrams, *Sex Wars Redux*, *supra*, at 333.

to the Greek Cypriot and United States' experience with this issue. I will argue that the Greek Cypriot experiences demonstrates that nonsubordination theory, as modified by recent theorists to include a partial agency component, provides the most appropriate framework within which to address the problem of victims not wishing to testify against their abusers, and from which to formulate legal responses to that problem.

Greek Cypriot society is a particularly useful vehicle through which to test the validity of these different feminist perspectives because it is a transitional society in which the rights of women have only recently begun to emerge. When examining the plight of battered women in such a society, I argue that formal equality is inadequate. Its emphasis on providing women with the same choices that men have ignores the radically different situation in which women in such a society find themselves.

Similarly, MacKinnon's nonsubordination theory, which portrays women as victims and calls upon the state to take action to protect them, fails because it does not sufficiently address the diverse experiences of battered women—even in a culture as homogenous and patriarchal as Greek Cypriot society. Instead, I argue that nonsubordination theory modified by a partial agency perspective provides a more appropriate approach. This theory allows for the possibility that some victims of domestic violence, even in a transitional society, maintain a degree of autonomy. It also dictates a legal response to domestic violence that respects this autonomy by not requiring the identical treatment of all battered women.

After examining these theories in light of Greek Cypriot society, I finally argue that this analysis is even more applicable to United States society. As in the Republic of Cyprus, the formal equality approach does not adequately take into account the unique situation of women in our society. On the other hand, the United States is a more modern society and the rights of women, although not equal to those of men, are more firmly entrenched than in Greek Cypriot society. Therefore, MacKinnon's nonsubordination theory view of women as total victims<sup>10</sup>

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10. About portraying women as victims, MacKinnon has stated that "the parade of horrors demonstrating the systematic victimization of women often produces the criticism that for me to *say* women are victimized reinforces the stereotype that women 'are' victims. . . . If this stereotype is a stereotype, it has already been accomplished . . . ." CATHARINE A. MACKINNON, *Afterword*, in *FEMINISM UNMODIFIED* 215, 220 (1987).

and the legal responses that flow from that view are even more inappropriate in the United States. Moreover, the United States is a more diverse society than Greek Cypriot society. Therefore, we need a perspective that provides a more varied view of women and that calls for a more nuanced response to domestic violence issues than provided by MacKinnon's nonsubordination theory. Thus, in light of this analysis, I conclude that the approach, approved by recent commentators,<sup>11</sup> requiring victims of domestic violence to testify against their abusers should be reconsidered.

## PART I. THE AMERICAN APPROACH

As United States society has struggled with domestic violence, one recent response has been the adoption of "no-drop" policies defined as "statement[s] declaring that the state will not drop a domestic violence case due to victim nonparticipation."<sup>12</sup> Some of these policies specifically require victims to testify through the use of subpoenas.<sup>13</sup> This section focuses on the arguments for and against no-drop policies, as they provide a framework within which to examine the issue of compelling a domestic violence victim to testify against her abuser. I will then examine the specific issue of requiring a domestic violence victim to testify against her will.

### A. No-Drop Policies

In the United States, interest in no-drop policies is a response to prosecutors who frequently do not proceed with spousal assault and

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11. See, e.g., Hanna, *supra* note 6, at 1885–88; Malinda L. Seymore, *Isn't It a Crime: Feminist Perspectives on Spousal Immunity and Spousal Violence*, 90 NW. U. L. REV. 1032, 1082 (1996).

12. Angela Corsilles, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 FORDHAM L. REV. 853, 858 (1994).

Cheryl Hanna differentiates between "hard" and "soft" no-drop policies. According to Hanna, a few jurisdictions, such as Duluth, Minnesota and San Diego, California, have a "hard" policy, where the case will proceed regardless of the victim's wishes if there is sufficient evidence. On the other hand, most jurisdictions that have no-drop policies have "soft" policies—rather than forcing victims to participate in the criminal process, they are provided with support and encouragement to do so. See Hanna, *supra* note 6, at 1863. If, however, the victim ultimately does not wish to participate in the process and there is not sufficient evidence to proceed without her testimony, a prosecutor will most likely dismiss the case. See Hanna, *supra* note 6, at 1864.

13. See, e.g., Corsilles, *supra* note 12, at 860–62 (discussing San Diego's and Duluth's no-drop policies).

battery cases or later dismiss the charges. Angela Corsilles discusses the interplay of two factors—"legal noncooperation" and "victim noncooperation"—as the cause of the high attrition rate in domestic violence cases.<sup>14</sup> She points out that prosecutors' motivations to drop domestic violence cases often reflect a failure to understand the dynamics of battering.<sup>15</sup> In addition, some prosecutors choose to drop cases based on their experience that victims often change their minds about prosecution.<sup>16</sup> Commentators argue, however, that the behavior of prosecutors has a significant effect on this phenomenon.<sup>17</sup> Finally, some prosecutors make these decisions based on organizational goals and incentives, such as achievement of high conviction rates.<sup>18</sup>

Victims choose to drop charges for a variety of reasons, including "fear of retaliation, a lack of understanding about how the criminal justice system works, the length of time it takes to process a case, and reconciliation with the batterer."<sup>19</sup> They also often feel intimidated by the legal system. For example, Missouri's Task Force on Gender and Justice [hereinafter Task Force] noted complaints of both rudeness of court personnel and insensitivity of judges.<sup>20</sup> The Task Force cited, among other examples, the following testimony of one witness:

In past incidents the perpetrator had broken this woman's ribs, a knuckle, and inflicted smaller injuries. Because she fled from another county and was in a safe house, she didn't seek an order of protection for two weeks. The judge said she had waited too long and needed a more recent incident for her to have a good case.<sup>21</sup>

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14. Corsilles, *supra* note 12, at 865.

15. See Corsilles, *supra* note 12, at 867; see also James Martin Truss, *The Subjection of Women . . . Still: Unfulfilled Promises of Protection for Women Victims of Domestic Violence*, 26 ST. MARY'S L.J. 1149, 1193 (1995).

16. See Corsilles, *supra* note 12, at 867.

17. See, e.g., Corsilles, *supra* note 12, at 867-70.

18. See Corsilles, *supra* note 12, at 867.

19. Joan M. Schroeder, *Using Battered Woman Syndrome Evidence in the Prosecution of a Batterer*, 76 IOWA L. REV. 553, 560 n.64 (1991) (citing LISA G. LERMAN, PROSECUTION OF SPOUSE ABUSE: INNOVATIONS IN CRIMINAL JUSTICE RESPONSE 18-20 (1981)).

20. See *Report of the Missouri Task Force on Gender and Justice*, 58 MO. L. REV. 485, 502-06 (1993) [hereinafter *Task Force*].

21. *Task Force*, *supra* note 20, at 505.



The Task Force also noted that there was evidence "that victims of abuse may be demeaned, intimidated, or even assaulted while waiting in the courthouse for their cases to be heard;"<sup>22</sup> sometimes the courthouse could be "as intimidating [to victims] as their abusers."<sup>23</sup> The Task Force included in its recommendations training for both judges and court personnel in the dynamics of violence,<sup>24</sup> studies to determine whether changes in physical facilities and practices are needed to "assure the safety and dignity of [the] parties,"<sup>25</sup> and funding for "victim assistance programs [to] increase the rate of prosecutions for domestic violence, as well as to ensure judicial fairness to the victims."<sup>26</sup>

States that have instituted programs to make victims more comfortable with court proceedings have reported success. According to Judge Hollis Webster, for example, the use of court victim advocates<sup>27</sup> for victims in Illinois has been "invaluable" because often a victim is suffering from "emotional and physical trauma and is ill-equipped to complete the process without an advocate's support."<sup>28</sup> Judge Webster reports that advocates encourage victims to testify.<sup>29</sup> They also provide support during the trial and sentencing hearings, and are often more successful than prosecutors in encouraging victims to follow through on criminal charges.<sup>30</sup>

Another way to facilitate victim cooperation is by informing the victim of the prosecutor's responsibility to file charges and to formulate goals consistent with the victim's goals.<sup>31</sup> Prosecutors have noted that this policy results in fewer dismissals due to victim noncooperation.<sup>32</sup> In addition, prosecutors have found that "attrition can be reduced if the prosecutor signs the complaint," so that the batterer knows that the

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22. *Task Force*, *supra* note 20, at 525.

23. *Task Force*, *supra* note 20, at 496.

24. *See Task Force*, *supra* note 20, at 523.

25. *Task Force*, *supra* note 20, at 525.

26. *Task Force*, *supra* note 20, at 526.

27. *See* Hon. Hollis L. Webster, *Enforcement in Domestic Violence Cases*, 26 LOY. U. CHI. L.J. 663, 667 (1995) ("Battered women's shelters and other social agencies may offer victims of domestic violence a variety of support services, including providing victim court advocates to assist in court proceedings.").

28. Webster, *supra* note 27, at 667.

29. *See* Webster, *supra* note 27, at 667.

30. *See* Webster, *supra* note 27, at 667.

31. *See* Schroeder, *supra* note 19, at 560 n.64 (citing LERMAN, *supra* note 19, at 33-34).

32. *See* Schroeder, *supra* note 19, at 560 n.64 (citing LERMAN, *supra* note 19, at 34).

victim cannot drop the charges.<sup>33</sup> Moreover, in some states prosecutors are obtaining good results even when they proceed without a victim's testimony.<sup>34</sup> In other states, prosecutors are successfully using experts on the Battered Woman Syndrome<sup>35</sup> to explain to juries why some battered women might defend their abusers.<sup>36</sup>

Corsilles summarizes the arguments in favor of and against no-drop provisions.<sup>37</sup> Proponents argue first that these provisions reduce "high case attrition rates and facilitat[e] the cooperation of victims."<sup>38</sup> Second, no-drop policies positively affect the batterer's conduct toward the victim because the victim no longer has the power to decide whether to proceed with the charges.<sup>39</sup> Third, when prosecutors can no longer use "victim

33. Schroeder, *supra* note 19, at 560 n.64. Schroeder also notes that in *State v. Frost*, 577 A.2d 1282, 1285 (N.J. Super. Ct. App. Div. 1990), the defendant was sure the victim would drop the charges until he found out that it was the officer who had signed the complaint. See Schroeder, *supra* note 19, at 560 n.64.

34. See Stephanie B. Goldberg, *Nobody's Victim*, A.B.A. J., July 1996, at 50. For example, in San Diego in 1995, 33% of misdemeanor cases against batterers went to trial without the victims being present. San Diego credits its downturn in domestic homicides to victimless prosecutions and its aggressive approach to misdemeanors, which forestalls more serious violence before it occurs. Goldberg, *supra*, at 50. For a description of techniques that prosecutors use to successfully prosecute abusers without victims' testimony, see Hanna, *supra* note 6, at 1898-1909.

35. See Schroeder, *supra* note 19, at 557-59 (describing the Battered Woman Syndrome).

36. For example, the New York Times reported in a recent case that, "[o]ver a period of eight years, Boris Ellis struck his wife, stabbed her, twisted a string around her neck so tight it left scars, put a gun to her head, burned her buttocks with an iron and routinely threatened to kill her." When prosecutors asked her to testify against her husband, Ms. Ellis did not want to do so. On the witness stand she recanted her accusations against him, blaming the violence on herself and stating that she was injured by a fall in the closet. The prosecutors petitioned the judge for an expert to explain why many battered women return to their husbands. The jury found the husband guilty of assault. Adam Nossiter, *When Battered Women Recant: New Witness for the Prosecution*, N.Y. TIMES, June 9, 1996, § 4, at 4.

37. See Corsilles, *supra* note 12, at 873-76.

38. Corsilles, *supra* note 12, at 873. Corsilles quotes one victim's explanation of her decision not to testify:

I was afraid every second. If I refused to testify he would maybe not blame me for getting arrested. If I testified and he didn't get convicted he'd have more power over me than ever before. If I testified and he didn't get jail time, I'd be in the same boat. It seemed like there were about eight scenarios that would go against me and only one that would work out.

Corsilles, *supra* note 12, at 873 (citing Mary E. Asmus et al., *Prosecuting Domestic Abuse Cases in Duluth: Developing Effective Prosecution Strategies from Understanding the Dynamics of Abusive Relationships*, 15 HAMLINE L. REV. 115, 130 (1991)).

39. See Corsilles, *supra* note 12, at 874. The statement of one man arrested for abusing

noncooperation" as a basis for not proceeding with a case, they learn to try cases without the victim's testimony more effectively.<sup>40</sup> Finally, proponents argue that no-drop policies convey society's recognition of the seriousness of battering.<sup>41</sup>

However, there are a number of arguments against no-drop policies. First, no-drop policies remove the prosecutor's discretion about whether to proceed in a particular case.<sup>42</sup> Second, no-drop policies might waste prosecutorial resources by forcing prosecutors to proceed with cases they are unlikely to win.<sup>43</sup> In addition, victims may feel that continued prosecution of their case not only exposes victims to further violence, but also may deter them from calling the police. When a no-drop policy forces a victim to testify, such a policy might subject victims to being jailed for contempt for refusing to testify.<sup>44</sup> Finally, such policies might undermine a woman's sense of empowerment<sup>45</sup> and may deflect attention from the other shortcomings in the legal system's treatment of battered

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his wife illustrated the positive effect of no-drop policies:

I told her, "I may as well do all that stuff again since I'm going to jail for it. So she tried to get the charges dropped . . . But the State picked up the charges and would not drop them. I don't know if I would have hit her. I think it helped her because I know she tried and she couldn't drop them so I couldn't really blame her."

*Developments in the Law—Legal Responses to Domestic Violence* (pt. 3), 106 HARV. L. REV. 1528, 1541 n.92 (1993) [hereinafter *Developments*] (quoting Asmus, *supra* note 38, at 118).

40. See Corsilles, *supra* note 12, at 874.

41. See Corsilles, *supra* note 12, at 874.

42. See Corsilles, *supra* note 12, at 875.

43. See Corsilles, *supra* note 12, at 875.

44. See *Developments*, *supra* note 39, at 1541 (citing John Riley, *Spouse-Abuse Victim Jailed After No-Drop Policy Invoked*, NAT'L L.J., Aug. 22, 1983, at 4, 35). Several jurisdictions have reported instances of women being jailed for contempt. See Corsilles, *supra* note 12, at 876. When prosecutors routinely use subpoenas to compel the testimony of both cooperative and noncooperative witnesses, the batterer is less able to blame the victim and pressure her to drop the charges. See *Developments*, *supra* note 39, at 1540.

45. See *Developments*, *supra* note 39, at 1541 (citing Jan Hoffman, *When Men Hit Women*, N.Y. TIMES, Feb. 16, 1992, § 6 (Magazine), at 22). Cheryl Hanna points out, for example, that when researchers reviewed the Indianapolis prosecution program, they found that allowing victims who initially filed charges to drop them "empowers women to take control of the events in their relationship." See Hanna, *supra* note 6, at 1866 & n.75 (citing David A. Ford & Mary Jean Regoli, *The Criminal Prosecution of Wife Assaulters: Process, Problems, and Effects*, in LEGAL RESPONSES TO WIFE ASSAULT 157 (N. Zoe Hilton ed., 1993)).

women.<sup>46</sup> Nonetheless, Corsilles concludes that the early results of no-drop policies are promising, and that more jurisdictions should adopt such policies.

Cheryl Hanna agrees with Corsilles that the benefits of no-drop policies outweigh their detriments, although she acknowledges several difficulties in assessing no-drop policies. First, they vary greatly among jurisdictions and innovative programs are "still in the early stages of evaluation."<sup>47</sup> Second, the distinction between written policies and practice is hard to see.<sup>48</sup> Finally, "there is no clear consensus on how to determine whether a policy is successful."<sup>49</sup> Hanna also observes, however, that some data indicate that homicide rates decline in response to active domestic violence prosecutions.<sup>50</sup> In addition, she notes that "jurisdictions that commit significant resources to domestic violence improve prosecution rates, lower recidivism rates, and communicate a stronger message that domestic violence will not be tolerated."<sup>51</sup> Thus, like Corsilles, Hanna argues that aggressive prosecution policies should be adopted.

### *B. Requiring a Victim to Testify*

Malinda Seymore provides an excellent analysis of the legal framework within which to examine whether to require a domestic violence victim to testify.<sup>52</sup> She explains that although every state provides for compulsory process, most states have recognized a spousal immunity privilege which prevents the testimony of one spouse against the other.<sup>53</sup> In 1980, the Supreme Court in *Trammel v. United States* held that a witness-spouse could choose to waive the privilege<sup>54</sup> and several states

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46. See Corsilles, *supra* note 12, at 876.

47. Hanna, *supra* note 6, at 1864.

48. See Hanna, *supra* note 6, at 1864.

49. Hanna, *supra* note 6, at 1864.

50. See Hanna, *supra* note 6, at 1864 (noting that "[i]n San Diego, homicides related to domestic violence fell from thirty in 1985 to seven in 1994" after a "hard" no-drop policy was implemented).

51. Hanna, *supra* note 6, at 1864.

52. See Malinda L. Seymore, *Isn't It a Crime: Feminist Perspectives on Spousal Immunity and Spousal Violence*, 90 NW. U. L. REV. 1032 (1996).

53. Seymore, *supra* note 52, at 1045 (explaining that the privilege generally applies only in criminal cases) (citing David Medine, *The Adverse Testimonial Privilege: Time to Dispose of a 'Sentimental Relic'*, 67 OR. L. REV. 519, 520 & n.8 (1988)).

54. *Trammel v. United States*, 445 U.S. 40 (1980).

have rules like *Trammel*.<sup>55</sup> A number of additional exceptions to this privilege have developed, particularly when one spouse has committed a crime against the other.<sup>56</sup> Thus, in a majority of jurisdictions the testifying spouse holds the privilege and can testify voluntarily about the abuse if she wishes to do so.<sup>57</sup> Moreover, in a majority of jurisdictions the spousal violence exception allows the prosecution to compel an abused wife to testify against her husband.<sup>58</sup>

Nonetheless, Seymore criticizes the spousal immunity doctrine as a way of reinforcing the idea that domestic violence is a matter for the private sphere.<sup>59</sup> She discusses a series of fifteen interviews conducted with victims of domestic violence in Texas shelters, in which women were asked about a pending change in Texas law that would compel a wife to testify against her husband.<sup>60</sup> All of the women stated that they would be honest even if they were forced to testify, and almost all of them approved of the change in the law.<sup>61</sup> In addition, several of the women seemed to consider it liberating that the state would decide whether they should testify.<sup>62</sup> Seymore finds additional support under the old law, in which girlfriends could not claim the immunity privilege against their abusers and often testified reluctantly.<sup>63</sup> One prosecutor stated that she has “never had a reluctant girlfriend lie—or at least tell a story different from the story she first told the police—on the witness stand.”<sup>64</sup>

Despite the willingness of most of the women interviewed to testify if they were compelled to do so, several of the women expressed fear that

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55. See Seymore, *supra* note 52, at 1049–50 (claiming that some jurisdictions grant the privilege to the defendant-spouse, or disallow one spouse’s testimony if both parties do not consent, while still viewing spousal immunity as a “rule of incompetency” that either party or the court can raise).

56. See Seymore, *supra* note 52, at 1050.

57. See Seymore, *supra* note 52, at 1062.

58. See Seymore, *supra* note 52, at 1062.

59. See Seymore, *supra* note 52, at 1072.

60. Seymore notes that although the interviews “are not meant as an accurate empirical survey, the results give voice to women’s concerns and attitudes toward the decision [of] whether to testify.” Seymore, *supra* note 52, at 1036 n.16.

61. See Seymore, *supra* note 52, at 1077.

62. See Seymore, *supra* note 52, at 1078. For example, one woman explained that it would be a relief to be forced to testify because it might make her abuser get help.

63. See Seymore, *supra* note 52, at 1077 n.294.

64. Seymore, *supra* note 52, at 1077 n.294 (citing Interview with Cynthia Findahl, Domestic Violence Unit, Dallas County District Attorney’s Office (Mar. 21, 1995)).

their abusers would retaliate if they testified.<sup>65</sup> Seymore responds to these concerns by citing empirical data which indicate that prosecution does not increase the victim's risk of being subject to repeated violence.<sup>66</sup> In addition, she criticizes states that have no spousal crime exception to spousal immunity, contending that to allow a wife to testify voluntarily shifts "our focus from the battering husband to his victim by blaming her for not leaving and for not testifying . . . . A spousal immunity rule that gives the wife an election simply leaves her to be harassed, threatened, and manipulated by her husband into invoking her privilege not to testify."<sup>67</sup> More fundamentally, however, she argues that spousal immunity should be abolished altogether because:

There is no appropriate substitute for the state's power to compel a reluctant spouse. The true value is not in the exercise of such power, but in the ability to exercise it. Prosecutors will not be jailing victims for contempt on a regular basis because most victims will likely testify when told they must. Further, batterers who can no longer rely on force or their persuasive powers to make the victim invoke the privilege will be more likely to accept a plea bargain offer from the prosecution. In such a case, there would be no need for the victim's testimony.<sup>68</sup>

Thus, Seymore argues that victims of domestic violence should be required to testify against their spouse.

Cheryl Hanna shares Seymore's view that domestic violence victims should be required to testify.<sup>69</sup> She argues that the severity of the violence often increases when batterers are able to escape responsibility for their actions.<sup>70</sup> In addition, she argues that failure to prosecute can have consequences beyond the danger to the victim because most batterers will

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65. See Seymore, *supra* note 52, at 1078.

66. See Seymore, *supra* note 52, at 1079 (citing David A. Ford, *Preventing and Provoking Wife Battery Through Criminal Sanctioning: A Look at the Risks*, in ABUSED AND BATTERED: SOCIAL AND LEGAL RESPONSES TO FAMILY VIOLENCE 207-08 (Dean D. Knudsen & JoAnn L. Miller eds., 1991)).

67. Seymore, *supra* note 52, at 1081 (footnotes omitted).

68. Seymore, *supra* note 52, at 1082-83 (footnotes omitted).

69. See Hanna, *supra* note 6, at 1885.

70. See Hanna, *supra* note 6, at 1895 (citing LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 43-44 (1984)).

abuse new partners.<sup>71</sup> Moreover, children raised in violent families are more likely to be abused as children and to be abusers as adults.<sup>72</sup> Although she acknowledges that forced participation could occasionally increase the danger to which the victim is exposed, she agrees with Seymore that the available evidence shows that these concerns are exaggerated.<sup>73</sup> Hanna stresses, however, that relying on victim testimony alone is often insufficient to obtain a conviction, and that prosecutors must become more proficient at gathering other kinds of evidence in order to present an effective case.<sup>74</sup>

Clare Dalton and Elizabeth Schneider do not share the view that requiring an abused wife to testify is the better policy. Instead, they argue that "forcing a woman to testify is hardly workable unless prosecutors fully understand her situation. But if such an assessment takes place, the policy may be unnecessary because she is more likely to testify voluntarily."<sup>75</sup> Therefore, they contend that a more effective policy would be to assign the victim a "victim witness advocate" who would talk with her and help her to assess the danger in her situation.<sup>76</sup> In addition, Dalton and Schneider suggest that the prosecutor should explore the possibility of proceeding without the victim. Only after going through these steps should the prosecutor decide whether to compel a witness' testimony.<sup>77</sup>

In sum, although there is some dispute about the usefulness of no-drop policies, they are less controversial than the issue of whether a woman should be forced to testify against her abuser. Many commentators believe that it is important for states to be aggressive in prosecuting domestic violence cases but contend that these cases can be prosecuted effectively without the testimony of the victim. They are concerned about victimizing the victim once again by forcing her to testify against her will or facing the possibility of being jailed. Others believe that these concerns are exaggerated and that forcing a victim to testify will be in

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71. See Hanna, *supra* note 6, at 1895.

72. See Hanna, *supra* note 6, at 1895 (citing Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1055-56 (1991); Myra Sun & Elizabeth Thomas, *Custody Litigation on Behalf of Battered Women*, 21 CLEARINGHOUSE REV. 563, 565 (1987)).

73. See Hanna, *supra* note 6, at 1896.

74. See Hanna, *supra* note 6, at 1898-905.

75. Dalton & Schneider, *supra* note 3.

76. See Dalton & Schneider, *supra* note 3.

77. See Dalton & Schneider, *supra* note 3.

her best interest. Whether or not a no-drop policy requires a victim to testify, most commentators agree that the legal system should make victims of domestic violence more comfortable<sup>78</sup> so that the likelihood of their cooperation with the prosecutor is maximized.

## PART II. THE GREEK CYPRIOT APPROACH

In order to assess the Greek Cypriot approach to domestic violence victims who do not want to testify against their abusers, it is helpful to understand the role and status of women in Greek Cypriot society. Therefore, this section first examines the role of Greek Cypriot women in the Greek Orthodox Church,<sup>79</sup> family life, the workplace, the educational system, and the government. Each of these aspects of Greek Cypriot society traditionally has been and continues to be dominated by men, while women's interests have been largely ignored.<sup>80</sup> For this reason, information about Greek Cypriot women is limited.

Primarily in response to the division of the island in 1974<sup>81</sup> and to the United Nations' efforts to improve the status of women throughout the world, the Greek Cypriot government and non-governmental organizations recently have begun to address the treatment of women in Greek Cypriot society. This section will also discuss those efforts, of which the Violence in the Family Law is a part.

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78. See, e.g., Hanna, *supra* note 6, at 1893 (discussing the increased sensitivity of the criminal justice system to victims of domestic violence).

79. The vast majority of Greek Cypriots are members of the Greek Orthodox Church. See CYPRUS: A COUNTRY STUDY xiv (Eric Solsten ed., 4th ed. 1993).

80. These topics comprise several, but certainly not all, of the Greek Cypriot institutions that reflect male dominance.

To my knowledge, there is no published work that presents an in depth picture of the extent of patriarchy in Cyprus and its consequences for women. According to author Mary Pyrgos, her unpublished three volume work on women in Cyprus is the only work that does so. See Interview with Mary Pyrgos, Former President of the Association for the Prevention and Handling of Domestic Violence, in Nicosia, Cyprus (Jan. 30, 1996). I share her hope that she can someday find the funding to publish this much needed work.

Please note that there are no formal transcripts of the interviews I conducted in Cyprus. I took notes during these interviews and I am relying on my notes and my memory of the interviews when describing the information that I gathered from them.

81. See Hunt, *Independence and Invasion*, in FOOTPRINTS IN CYPRUS, *supra* note 1, at 260, 269-72.



*A. The Status and Role of Women in Greek Cypriot Society*

1. The Greek Orthodox Church

The Greek Orthodox Church has played a powerful role in Greek Cypriot society, serving as a source of identity for the Greek Cypriots during centuries of subjugation.<sup>82</sup> The power of the Church, which gained its independence in 431, was strongly curtailed from 1192–1489, when the Lusignans controlled the island. The Venetians followed in power until 1571. During these periods, Roman Catholicism was the official religion of the island. Orthodox bishops were under the control of Roman bishops and the Western Roman Church appropriated the revenues and most of the property of the Greek Orthodox Church. In addition, deposed Orthodox bishops were exiled and monks who refused to convert were burned to death. At the same time, the Greek Cypriot population was forced into serfdom.<sup>83</sup> Thus, “a deep bond [developed] between the Church and the Greek Cypriot population.”<sup>84</sup>

This bond was strengthened from 1571 to 1878 when the Ottoman Turks ruled the island, because the Ottomans allowed the Cypriot spiritual leaders to control and to represent their communities.<sup>85</sup> Thus, the Archbishop of Cyprus became the “administrator or Ethnarch of Cyprus (leader of the nation) . . . [who became] the spokesman of Greeks on all administrative and political issues.”<sup>86</sup> The Archbishop

82. See Maria Roussou, *Greek Cypriot Women in Contemporary Cyprus with Special Reference to the 1974 War and its Consequences 170–71* (1985) (unpublished Ph.D. dissertation, University of London) (on file with author).

83. See Roussou, *supra* note 82, at 169–71.

84. Roussou, *supra* note 82, at 171. In describing his impressions of a typical Cypriot village, Argaki, in 1968, Peter Loizos discusses the hold of the Church on the Greek Cypriot population:

Everybody married in church. Even though there was a sizeable number of villagers—perhaps a third—who were communists, socialists, or called themselves ‘modern’ or ‘progressive’, and even though the men among them could be brought to say that they did not think God existed, that religion was largely superstition, that the Church owned far too much property and should care better for the poor, it was notable that no cases came to my knowledge of *anyone*—right, centre, or left—refusing to have his children baptised, to marry in church, or to have his old people buried by the priest.

PETER LOIZOS, *THE HEART GROWN BITTER: A CHRONICLE OF CYPRIOT WAR REFUGEES* 34 (1981) [hereinafter LOIZOS, *HEART GROWN BITTER*].

85. See Roussou, *supra* note 82, at 172.

86. Roussou, *supra* note 82, at 172.

collected taxes<sup>87</sup> and, through the bishop and local clergy, exercised jurisdiction over marriage, divorce, dowry, and inheritance. In addition, the Church started the first Greek School, the Pancrypian Gymnasium,<sup>88</sup> which has been extremely influential. Finally, during this period the church also became wealthy.<sup>89</sup>

During the period of British rule, from 1878 to 1960, the Church's ideological authority continued to grow. Although Britain tried to limit the Church's role by removing its taxation power, the Church increased its influence by leading the *enosis* movement,<sup>90</sup> and by using its control over various organizations to spread nationalism and to politicize the schools.<sup>91</sup> The individual priest became "the symbol of the combined political and religious resistance to British rule . . . Priests in villages and small towns were among the small minority of literate, learned people, [and] informed educated debaters in coffee shops [whose] help could be relied upon in the struggle for freedom."<sup>92</sup> Moreover, after 1960, when the economy began to grow, the Church retained its property which acquired great value.<sup>93</sup>

The Church's close ties to the State continued after the formation of the Republic in 1960, when Archbishop Makarios was elected first president of the Republic. Since Makarios' death in 1978 the president of the Republic has been a secular leader, but the Church has retained its strong influence. According to one scholar, "[a]mong the Greek-Cypriot population . . . the [Greek] Orthodox [Church's] outlook is pre-eminent. It is extremely significant that the majority of this population

87. See Roussou, *supra* note 82, at 174 (noting that the Turkish governor's chief interpreter helped the Archbishop and "[t]ogether they were a formidable combination").

88. See Roussou, *supra* note 82, at 174 (noting that Greek education was controlled by the Church which had significant ramifications in terms of the attitudes it conveyed toward women and on the formation of Greek political views).

89. See Roussou, *supra* note 82, at 174.

90. See Roussou, *supra* note 82, at 177-78. *Enosis* was the movement to merge Cyprus with Greece. Greece became independent from the Ottoman Empire in 1821, at which time ethnic Greeks living in the Ionian and Aegean islands, Crete, Cyprus, and areas of Anatolia began thinking about *enosis*. In 1864 Britain ceded the Ionian Islands to Greece. Thus, when the British Empire gained control of Cyprus in 1878, Greek Cypriots looked to the ceding of the Ionian Islands as a precedent. The *enosis* movement flourished after World War II and in the 1950's anti-colonial guerilla activities began. See CYPRUS: A COUNTRY STUDY, *supra* note 79, at 3.

91. See Roussou, *supra* note 82, at 179.

92. Roussou, *supra* note 82, at 179.

93. See Roussou, *supra* note 82, at 180.

do [sic] not resent this kind of domination. They accept it as a natural, organic and [an] established part of Cypriot life."<sup>94</sup>

Given its enormous influence over the Greek Cypriot population, the Church's attitude toward women as inferior to men has had far-reaching effects. In the Greek Orthodox Church only men may hold positions of authority, while women are restricted to attending religious ceremonies.<sup>95</sup> When women attend these ceremonies they are not permitted to enter the room where the ceremony takes place.<sup>96</sup> Instead, special seats are reserved for women in the mezzanine or at the back of the church.<sup>97</sup> "Women [are] not allowed to belong to the active congregation, or the church choir . . . ."<sup>98</sup> They are prohibited from "hold[ing] icons during processions or other services [and from] enter[ing] the sanctuary."<sup>99</sup> Traditionally, they had to wait for men to leave the Church first and entered the Church through separate doors.<sup>100</sup> Through all these practices, the "internalization of [women's] inferior status was secured."<sup>101</sup>

Part of the Church's attitude toward women clearly stems from its negative view toward female sexuality. Women in Cyprus are not allowed to enter any church or participate in any religious ceremony during menstruation.<sup>102</sup> In addition, the Church places great emphasis on women exhibiting sexuality only within the marriage relationship. According to one scholar:

94. Roussou, *supra* note 82, at 181-82.

95. See Chrystalla Antoniou, *The Evolution of Cypriot Women in Society and Their Increased Participation in Civil Engineering* 25 (1994) [hereinafter, Antoniou, *Evolution*] (unpublished M. Phil. thesis, University of Glamorgan) (on file with author).

96. See Antoniou, *Evolution*, *supra* note 95, at 25.

97. See Antoniou, *Evolution*, *supra* note 95, at 25. This practice arose so that women would not contaminate the Holy Icons and the Holy Communion by their presence, especially if they were menstruating. In addition, women were seen as temptresses to be kept apart from the men who came to Church to communicate with God. Roussou, *supra* note 82, at 212.

98. Roussou, *supra* note 82, at 212.

99. Roussou, *supra* note 82, at 212.

100. See Roussou, *supra* note 82, at 212.

101. Roussou, *supra* note 82, at 212.

102. See Stavros Loizou Stavrou, *The Status of Greek Cypriot Women in Contemporary Cyprus: The Effects of the Economy and Other Major Institutions in the Development of New Gender Relations in Cypriot Society* 329 (1996) (unpublished Ph.D. dissertation, University of Bradford) [hereinafter Stavrou, *Status*] (on file with author). Stavrou gives the example of a student who asked her doctor for pills to delay her menstruation so that she could participate as a godmother in a christening. Stavrou, *Status*, *supra*, at 329.

[C]hurchmen . . . are very suspicious of all contacts between men and women who are not married to each other . . . More generally to dance in pairs, called "European dancing", which meant bodily contact with a member of the other sex, to wear a low-neck, sleeveless summer dress, or even to laugh and be at ease in front of men, were all characterized by the church as immoral and severely criticized by teachers in schools and preachers in the church. Greek Cypriot women were and still are expected to be chaste, modest and virginal . . . .<sup>103</sup>

The Church's laws regulating engagement and marriage reflect the Church's general view that women are inferior to men and its specific view that women's sexuality should be treated differently than men's. For example, the dowry contract,<sup>104</sup> a custom that reinforced the notion that women contribute less value to a marriage than a man,<sup>105</sup> until the 1980s had to be signed in front of the priest before the engagement or the marriage ceremony.<sup>106</sup> The dowry thus became a prerequisite to marriage, in the same way that a religious ceremony performed by a priest of the Orthodox church was a prerequisite to marriage in the first half of the twentieth century.<sup>107</sup> Although dowries are no longer required,<sup>108</sup> the

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103. Roussou, *supra* note 82, at 213.

104. The British introduced the dowry contract in response to "local circumstances and longstanding traditions." It became obligatory because the priest would "refuse to proceed with the engagement ceremony unless this contract had been signed." Roussou, *supra* note 82, at 227-28.

105. Although the dowry traditionally came from both the bride's family and the groom's family, the bride's family generally bore the bulk of the burden; the bride's father was obligated to provide land, money, and even a house unless he was very poor. See Roussou, *supra* note 82, at 232, 234-36. The underlying rationale for this custom was that women's labor, whether in the home bearing and rearing children or in the fields or in the family business, was not seen as work. Therefore, she was required to bring a contribution to the marriage to balance out her husband's contribution in the coming years. This obligation made male children the "darlings" of the social system and female children a cause for great anxiety. It also contributed to the diminishing of female children's self-esteem and confidence. Roussou, *supra* note 82, at 234, 239-41.

106. Dowry agreements were not removed from the Greek Orthodox wedding ceremony until the 1980s. See Antoniou, *Evolution*, *supra* note 95, at 27.

107. Roussou, *supra* note 82, at 201.

108. The upheaval caused by the war in 1974 profoundly changed the dowry system. Many families could no longer afford dowries for their daughters. Young couples increasingly worked together towards purchasing flats and "[m]any couples were even obliged to live for many years with their parents in order to save money." MARY A. PYRGOS, *THE CYPRIOT WOMAN AT A GLANCE* 58 (1993).

practice is still widespread.<sup>109</sup>

The dowry is only one of many Church practices that has reinforced the idea that the wife is subordinate to her husband. The marriage ceremony itself provides that a wife must be submissive to her husband. A passage in Saint Paul's Epistle to the Ephesians, which is part of the Greek Orthodox wedding ceremony, provides:

Wives submit to your husbands as to the Lord. For a husband has authority over his wife just as Christ has authority over the church . . . every husband must love his wife as himself and every wife must respect her husband.<sup>110</sup>

In addition, the Greek Orthodox Church's policy toward divorce manifests its view that wives are subordinate to their husbands. The Church greatly discourages divorce.<sup>111</sup> Moreover, the circumstances in which the Church allows divorce discriminate against women. The Rules of the Cypriot Church provide husbands with two grounds of divorce not available to wives. A husband may obtain a divorce if:

- a) . . . [T]he wife was found not to be a virgin on the first night of the wedding, this being reported to the local Bishop the next day.
- b) . . . [T]he wife [spends the night] with people not related to her unless she could not find a relative's house after

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109. Attitudes are changing about the dowry: "both sexes seem to agree that it is fairer for the dowry to be given equally by both parties." Stavros L. Stavrou, A Study on the Readers' Attitude of the Youth Magazine of Cyprus "Flash" toward Sex Role Identity 86 (1991) (unpublished P.G. Dip. dissertation, Polytechnic of East London) [hereinafter Stavrou, Readers' Attitude] (on file with the author).

110. Antoniou, *Evolution*, *supra* note 95, at 24.

111. See, e.g., Roussou, *supra* note 82, at 203. Roussou points out that lawyers and prominent politicians have supported the Church's position that divorce should be made difficult so that marriage partners will try to make their relationship work. She quotes K. Tornaritis, a prominent lawyer in 1924 and the attorney general in 1979, as stating:

The only thing that should seriously preoccupy the legislator is the possible extent that divorce may take. Marriage . . . is mainly a moral institution and is based on mutual love and respect between the spouses, but it does not refer only to them but also to the general social interest. The family is based on marriage . . . Social organization is based on healthy marriage. . . . If divorce is granted easily then social organization will be dissolved.

Roussou, *supra* note 82, at 203.

being ousted from home by her husband.<sup>112</sup>

A 1992 study of the attitude of Greek Orthodox Cypriot priests demonstrates that a substantial percentage of the priests continue to maintain the Church's sexual double standard for men and women.<sup>113</sup> The researcher posed a variety of hypotheticals to the priests and found that priests would advise husbands and wives whose spouses had been unfaithful differently, "For the cuckolded husband, the priest's advice was to obtain an immediate divorce. However, for the wife whose husband had been unfaithful, the advice was different. She would be strongly advised to ponder over and reconsider her divorce plans."<sup>114</sup>

The Church's attitude toward divorce is particularly disturbing because although secular divorces are now available,<sup>115</sup> a substantial majority of Cypriots are still seeking ecclesiastical divorces.<sup>116</sup> In addition, because of its negative attitude toward divorce, the Church has been noticeably absent in the struggle against domestic violence in Cyprus.

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112. Stavros L. Stavrou, *Social Change and the Position of Women in Cyprus*, 4 CYPRUS REV. 67, 79 (1992) [hereinafter Stavrou, *Social Change*] (quoting from Rules of the Cyprus Church (1914)).

The view of women as unworthy if they have sexual relations with anyone other than their husbands had far-reaching consequences after the Turkish occupation, during which many Greek Cypriot women were raped by Turkish soldiers. Roussou reports that in November 1974 the press reported that the husbands and fiancées of some rape victims had applied to the Church for divorce. Most people "understood the men and excused them." Roussou, *supra* note 82, at 95.

113. George J. Georgiou, *Sexual Attitudes of Greek Orthodox Priests in Cyprus*, 4 CYPRUS REV. 45, 48 (1992). The researcher sent the questionnaire to all 560 priests living in the Republic of Cyprus. Of the 560 priests, 130 or 23.2% responded. The author suggests that the response would have been higher if the Archbishop of Cyprus had not restricted the 150 priests in his diocese from responding. Georgiou, *supra*, at 45.

114. Georgiou, *supra* note 113, at 48. Georgiou notes that one possible reason for this distinction is "partly related to Article 225, that as the wife is no longer a virgin, she would be considered inferior to other virginal women." Georgiou, *supra* note 113, at 48. He also points out that this attitude is consistent with the patriarchal attitude of the Old Testament in which "[v]irginity in women, but not in men, was considered a prime quality in the choice of partner. Polygamy, concubinage, and extra-marital intercourse with slaves and prostitutes were legally countenanced for the male, but not the female." Georgiou, *supra* note 113, at 48.

115. The Constitution of the Republic of Cyprus was amended in 1989 to allow for the establishment of a secular family court system. CYPRUS CONST. amend. I, no. 95 (1980).

116. In 1994, the ecclesiastical courts granted 506 divorces and the civil courts granted 49 divorces. 1994 DEPT. OF STATS. AND RES. MINISTRY OF FIN. DEMOGRAPHIC REP. 137 (Cyprus).

Although the Church has a great deal of wealth,<sup>117</sup> it has not contributed funds to the Center for the Prevention and Handling of Family Violence [hereinafter "Center"],<sup>118</sup> despite the Center's great financial need and many requests to the Church that it do so.<sup>119</sup> Nor has the Church shown other interest in tackling the issue.<sup>120</sup> In a country where most of the population is Greek Orthodox and has accepted the Church's moral authority, the Church's lack of leadership in the struggle against domestic violence is a cause of great concern.

## 2. Family Life

Family life in Cyprus is in a state of transition.<sup>121</sup> Prior to the events of 1974,<sup>122</sup> the typical Greek Cypriot family was rural and highly

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117. See Roussou, *supra* note 82, at 180 (stating that "the [C]hurch retained its [earlier acquired] property throughout the British period and, after 1960, when the economy began to grow, this property acquired great value").

118. The Center is one of the projects of the Association for the Prevention and Handling of Domestic Violence [hereinafter Domestic Violence Association]. See Interview with Mary Pyrgos, *supra* note 80. It provides direct assistance to victims of domestic violence. See Interview with Katia Constantinou, Attorney for the Center, and Stavria Thalassi, Psychologist for the Center, and in Nicosia, Cyprus (Jan. 23, 1996).

119. See Interview with Aliki Hadjigeorgiou, President of the Domestic Violence Association, in Nicosia, Cyprus (Feb. 29, 1996).

120. For example, when the Center invited several members of the Church to a seminar on combatting domestic violence, most representatives of the Church did not attend. The one representative of the Church who did attend, only did so on a partial basis and expressed little interest in working with the other people attending the seminar. Interview with Stavria Thalassi, Psychologist for the Center for the Prevention and Handling of Domestic Violence, in Nicosia, Cyprus (Mar. 19, 1996).

121. Chrystalla Antoniou, *The Changing Patterns of the Greek-Cypriot Family*, 20 HIGHER TECHNICAL INST. REV. 47, 47 (1991) [hereinafter Antoniou, *Changing Patterns*]. Antoniou refers to four family patterns classified by sociologists: i) the traditional, ii) the transitional, iii) the contemporary, and iv) the ideal contemporary. In the traditional pattern, which operated before capitalism, "[t]he family functioned as an integrated economic unit . . . [and] the role of each individual member was defined by the prevailing traditions." On the other hand, the transitional family stopped "functioning as an integrated economic unit; its structure is in a stage of transition from traditional to contemporary." Antoniou, *Changing Patterns*, *supra*, at 47. "The contemporary pattern characterises [sic] big industrial societies [which are] less dependent on pre-defined roles." Antoniou, *Changing Patterns*, *supra*, at 47.

122. Antoniou designates this year as the turning point in the nature of the Greek Cypriot family. Although the Cypriot economy had been changing from an agricultural to an urban society before that time, the events following the Turkish occupation greatly accelerated the change. Antoniou, *Changing Patterns*, *supra* note 121, at 48.

Another scholar uses 1980 as "a dividing line between the old and the new condi-

patriarchal in that "it [was] ruled by the father who ha[d] authority over the other members of his family and decide[d] on all matters concerning such members . . . [and] in the sense that females ha[d] a lower status within the family as compared with the males."<sup>123</sup> The role of the man was "to represent the family in the public life of the society . . . [and] to protect it and to provide income for it."<sup>124</sup> The role of the woman was to be "domestic and expressive," i.e., to care for the home, the children, and the domestic animals, and to help her husband in agricultural tasks.<sup>125</sup> Although there is some evidence that the Greek Cypriot family is changing as a result of the urbanization of Greek Cypriot society, the Greek Cypriot family is still highly patriarchal.

#### a. The Traditional Cypriot Family<sup>126</sup>

In describing his impressions of the typical Cypriot village of Argaki in 1968, Peter Loizos vividly presents the men's control of the heart of the town and the discomfort women felt when they neared it:

The square was the secular centre for the men, very much a man's world, and women did not like to be seen there. If they

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tions prevailing in the Greek Cypriot family." Andreas D. Christodoulides, *Family and Youth in Cyprus*, 2 CYPRUS REV. 61 (1990). He chose this year because urbanization had reached its peak and the effects of the Turkish invasion had been absorbed. Christodoulides, *supra*, at 64.

Regardless of the year designated, it is clear that the Greek Cypriot family changed dramatically after 1974. Maria Roussou, who studied the lives of Greek Cypriot refugees after the occupation, refers to the "rural/urban continuum in the life of the women studied." Roussou, *supra* note 82, at 272. Although Roussou found that families forced to move from the north to the south shifted "from a rural to an urban setting or vice versa," most of the population change was from rural to urban areas. Roussou, *supra* note 82, at 272. In 1946 25% of Cypriots resided in urban areas. Roussou, *supra* note 82, at 271. By 1960 the urban population had increased to 36% of the total population and in 1973 it had risen to 42%. Roussou, *supra* note 82, at 271. After the 1974 war, the figure rose to 53%. Roussou, *supra* note 82, at 272.

In addition to the change caused by families moving from an agricultural to an urban setting, one author has pointed out that the war caused a dissolution of the extended family because, due to the lack of local work, men had to seek work abroad. PYRGOS, *supra* note 108, at 56.

123. CYPRUS SOCIAL RESEARCH CENTRE, CYPRIOT WOMAN RISE AND DOWNFALL 3 (1975).

124. CYPRUS SOCIAL RESEARCH CENTRE, *supra* note 123, at 4.

125. CYPRUS SOCIAL RESEARCH CENTRE, *supra* note 123, at 4.

126. Works cited in this section do not differentiate between Greek and Turkish Cypriots because they were written prior to the division of the island.



had to wait there for transport they stood silently to one side with downcast eyes. If they had to walk through it they tried to make sure they were wearing thick stockings. Mainly they went out of their way to avoid it, and would take a detour rather than pass through a space containing several hundred men.<sup>127</sup>

Loizos also describes women's second class status within their homes:

In most houses the women never spoke to me at meals before I spoke to them, and did not sit and eat with the men but hovered between kitchen and table, bringing new dishes. . . . After meals, men at leisure did not sit and talk to their wives. They left smartly for the coffee shops. There was no question of "keeping their wives company"; the proper company for a woman was other women, for a man other men. . . . The house was the place where women did most of their work, while men did most of their work "outside" in the fields, or the towns, or in politicking, the quest for intelligence, which occurred in the coffee shop while they were "at leisure."<sup>128</sup>

One of the fundamental aspects of this patriarchal family structure prior to 1974 was strict male control of female sexuality. Loizos describes men's attitude toward female sexuality in Argaki in 1968:

Unmarried girls should, where possible, be kept innocent of any contact with boys or men who were not their blood kin, and, since other men were always out not only to have fun but also to destroy the honour of their social competitors, a man should keep his women protected from any dangers of seduction or violation. Men believed that women were so little in control of their animal passions that they were very easily seduced, and that all a really skillful man needed to do to have his way with one was to be alone with her for a while in a quiet place. This view credited men with great powers of persuasion and women with great sexual frailty, but fitted closely with other local beliefs.<sup>129</sup>

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127. LOIZOS, HEART GROWN BITTER, *supra* note 84, at 15.

128. LOIZOS, HEART GROWN BITTER, *supra* note 84, at 28-29.

129. LOIZOS, HEART GROWN BITTER, *supra* note 84, at 30. See also Stavrou's dissertation

Another aspect of this patriarchal family structure was the father's role as disciplinarian and the mother's role as nurturer. In their study of family life in the village of Lysi, researchers found that fathers never dressed or fed their children and lacked the intimate relationship that the mother shared with them.<sup>130</sup> Although the mother disciplined the children because the father was usually not at home, the father's role was "often regarded as a kind of supreme court."<sup>131</sup> The researchers explained that "[c]hildren love their mother and consider her as being always on their side, whereas they love and respect their father but also fear his judgment. If the father tells off or punishes the child, the latter will run straight to his mother's apron to cry and complain."<sup>132</sup>

#### b. The Transitional Greek Cypriot Family

Although research about the modern Greek Cypriot family is sparse, there are indications that some of the authoritarian aspects of the traditional Cypriot family have been modified. For example, researchers have found that the traditional patriarchal family pattern of decision-making has been replaced by a more democratic pattern.<sup>133</sup> In one study researchers questioned married women about how decisions were made about matters such as the purchase of expensive household items, expensive items for themselves, the education of their children, and their

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which notes that:

Cyprus is situated amongst the Mediterranean and Asian cultures which still often place great emphasis on female's [sic] virginity and chastity and practise a strong sexual double standard. . . . In these societies, the isolation of women in the domestic sphere and the view of women as a form of property for men are accompanied by strict controls on female's [sic] sexuality. They tend to place extreme importance on premarital virginity and modesty for married women.

Stavrou, Status, *supra* note 102, at 325. Stavrou points out that until recently in Cyprus, tradition required that the morning after the wedding night the bride hang her sheets in front of her house so that all the villagers could see the blood of her broken hymen. Stavrou, Status, *supra* note 102, at 326.

130. See KYRIACOS C. MARKIDES ET AL., *LYSI: SOCIAL CHANGE IN A CYPRIOT VILLAGE* 98-99 (1978).

131. MARKIDES ET AL., *supra* note 130, at 99.

132. MARKIDES ET AL., *supra* note 130, at 99.

133. See, e.g., Eleni Kalava, *The Position and Role of the Cypriot Woman in the Family Today*, in *THE CYPRIOT WOMAN* 65, 74 (Psycho-Sociological Research Group 1986) (1982); Andreas D. Christodoulides, *Family and Youth in Cyprus*, 2 *CYPRUS REV.* 61, 67 (1990).

taking a permanent job. The majority of the respondents stated that they made these decisions jointly with their husbands.<sup>134</sup> In another study of interactions between adolescents and their parents, researchers found a "marked change in favour of democratization," with "[t]he autocratic father and the subservient son belong[ing] to the past."<sup>135</sup>

Researchers have also found, however, that in families of transition, old ideas are still deeply entrenched. For example, as of 1986, one study found that most Greek Cypriot women still considered marriage to be the main purpose of their lives.<sup>136</sup> The author of this study explained:

Viewing marriage as the ultimate goal is not peculiar to the women of our country. It is one of the characteristics of societies like ours, which are at a transitional stage from a traditional rural society to an urban-industrial society and which still have close ties with the traditional forms. One of their basic characteristics is the differentiation of the roles of the two sexes with different values ascribed to them. The man is placed at the top, while the woman is a second-class citizen.<sup>137</sup>

The author found that the primary reason women marry is for "the creation of a family."<sup>138</sup> She noted, however, that while "marriage still continues to be primary objective of every girl and the first concern of the family. . . . [G]irls acquire today a better theoretical and technical education and can successfully undertake more roles in society."<sup>139</sup>

134. See Kalava, *supra* note 133, at 74–75. Kalava notes, however, that it is not clear from her data what a couple meant in certain cases when they stated they made decisions "together." See Kalava, *supra* note 133, at 75. She suggests that it "could mean that the husband decides and merely informs his wife; perhaps it could mean that they do enter into discussion, but in case of disagreement the view of the husband always prevails; or it could mean the insistence of one and the giving way of the other." Kalava, *supra* note 133, at 75.

135. Christodoulides, *supra* note 133, at 67. It is of interest that Christodoulides refers only to the change in the father-son relationship. It is not clear whether he is doing so because past studies have concentrated on that relationship or due to a continued focus on males rather than females.

136. See Lia Mylona, *Marriage, in THE CYPRIOT WOMAN*, *supra* note 133, at 11, 13. To the question "Is marriage the most significant event in a woman's life?" 86.2% responded affirmatively.

137. Mylona, *supra* note 136, at 13.

138. Mylona, *supra* note 136, at 15.

139. Mylona, *supra* note 136, at 13 (quoting CYPRUS SOCIAL RESEARCH CENTRE, *supra* note 123, at 3).

Even though Greek Cypriot women's attitudes were changing towards sex,<sup>140</sup> the change was confined to marriage.<sup>141</sup>

The tremendous difference between Cyprus and other European countries may, to a large extent, be due to the restricted social environment of Cyprus, which, as a general rule, acts as a restraining factor in the rejection of traditional views concerning morality and sex, particularly on the part of the woman, who feels herself more exposed than the man.<sup>142</sup>

This finding was confirmed by another study which found that many young women still accept the idea that they are not entitled to the same sexual freedom as young males.<sup>143</sup> When analyzing the attitudes of Cypriot teenagers by studying their letters to a popular magazine, the researcher noted that "while almost all female readers are against male domination, about half of them consider premarital sex a male's privilege, and the female's chastity to be the moral symbol of the unmarried females."<sup>144</sup>

Still other researchers have found that male children continue to be treated differently than female children. They found that mothers had greater expectations for their daughters concerning loving others and

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140. See Costas Paschalis, *The Sexual Liberation of the Cypriot Woman*, in *THE CYPRIOT WOMAN*, *supra* note 133, at 43, 44 ("The women of both the country and of the town feel that they have equal rights of sexual fulfillment with men. Slowly but surely, the concept of sex as part of a complete, responsible human relationship has begun to displace the concept of sex as a sin and as merely a means of creating children.").

141. See Paschalis, *supra* note 140, at 55.

142. Paschalis, *supra* note 140, at 58. The author notes, however, that the younger generation has begun to reject traditional views concerning sex and that there was a strong correlation between educational level and the Cypriot woman's attitude toward sex. See Paschalis, *supra* note 140, at 59.

143. See Stavrou, *Readers' Attitude*, *supra* note 109, at 85-86.

144. Stavrou, *Readers' Attitude*, *supra* note 109, at 85-86. On the other hand, Stavrou noted that the appearance of European tourists in Cyprus seemed to influence the teenagers' attitudes, including causing them to mimic the sexual behavior of the tourists. See Stavrou, *Readers' Attitude*, *supra* note 109, at 86. He also noted that males and females agreed that it was fairer for both parties to give equally to the dowry, rather than following tradition and having the dowry be the responsibility of the bride. See Stavrou, *Readers' Attitude*, *supra* note 109, at 86. In sum, he found that: "The readers' attitudes towards all aspects of the traditional value system of the Cypriot culture appear to indicate a new and different approach. Their statements, most of which strongly contradict the traditional beliefs, seem to predict a kind of social change." Stavrou, *Readers' Attitude*, *supra* note 109, at 86.

housework, and more concerns about their sons being honest.<sup>145</sup> Parents also continued to be more restrictive of their daughter's behavior and leisure activities. Boys spent most of their leisure time outside the house, going to cafes or being involved in sports, while girls stayed mostly at home reading books or visiting friends.<sup>146</sup>

In sum, the information available indicates that Greek Cypriot households may be less authoritarian in their decisionmaking than they previously were and that females today more often perceive roles for themselves in addition to that of wife and mother. A double standard of sexual behavior continues to prevail, however, and women continue to feel that being a wife and mother is their primary role.

### 3. The Workplace

The change in the Greek Cypriot family from a traditional to a transitional family has caused significant changes in the workplace. During the early part of the twentieth century, when the Cypriot economy was largely an agricultural economy, most Cypriot women worked in industries which were home-based.<sup>147</sup> In 1921, for example, a census report showed that 88.64 percent of female employment was in home-based industries.<sup>148</sup> The census showed that 35.27 percent of the employed females worked as weavers, 24.77 percent in farming and cultivating, 12.36 percent working as "ploughmen" and agricultural labourers, 8.88 percent as sewers and dressmakers, and approximately 7.36 percent as domestic servants.<sup>149</sup>

Cypriot women continued to work primarily at home until the 1960s.<sup>150</sup> In 1946, for example, the recorded number of women partici-

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145. Antoniou, *Changing Patterns*, *supra* note 121, at 34. The author suggests that the concern about sons being honest might be attributable "to men's traditional role as representatives of their family to the public." Antoniou, *Changing Patterns*, *supra* note 121, at 34.

146. Antoniou, *Changing Patterns*, *supra* note 121, at 35.

147. See REPUBLIC OF CYPRUS, NATIONAL REPORT TO THE FOURTH WORLD CONFERENCE ON WOMEN 8 (1994) [hereinafter NAT'L REPORT].

148. See NAT'L REPORT, *supra* note 147, at 8.

149. See NAT'L REPORT, *supra* note 147, at 8. The report does not provide the percentage for the number of domestic servants. However, the number of embroiderers was 2449 or 7.36% and the number of domestic servants is listed as 2030, thus slightly less than the 7.36%.

150. See Roussou, *supra* note 82, at 305.

pating in full-time employment was twelve times less than that of men.<sup>151</sup> One reason that women did not enter the workplace was because of the prejudice against girls working outside the house. According to one author, before 1950, young women usually worked with relatives to protect themselves from harassment.<sup>152</sup> After 1950 more women started working outside the family in order to save money for their dowries. Women quit their jobs when they married, however, often because the Government had issued special regulations requiring married women in the Civil Service to quit their jobs.<sup>153</sup> Consequently, many women, particularly teachers, "remained engaged for as long as twenty years in order to keep their jobs."<sup>154</sup>

The change of the Cypriot economy from agricultural to primarily urban,<sup>155</sup> coupled with the large social changes that took place after the Turkish invasion, resulted in many more women entering the work force.<sup>156</sup> After the initial devastating effects of the war, the economy experienced high economic growth.<sup>157</sup> As a result of this expansion, there was a reduction in unemployment and a shortage of labor.<sup>158</sup> As of 1981,

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151. See Roussou, *supra* note 82, at 305. Loizos discusses this phenomenon in his account of life in a Cypriot village:

Another hint [to the ways women and men regarded each other] lay in the men's preference that their wives and daughters should not take on paid work, i.e., work for anyone but their family. A man who was doing well, as the sole provider, liked to boast, 'O, my wife has never been out to work.' Many families could not get by in this way, so then the problem was to make sure the women's work was acceptable, preferably in a group with other relatives, or working in the shop of a brother or cousin.

LOIZOS, HEART GROWN BITTER, *supra* note 84, at 29.

152. See PYRGOS, *supra* note 108, at 52.

153. See PYRGOS, *supra* note 108, at 52.

154. PYRGOS, *supra* note 108, at 52. Women in the workforce also were not paid equally to men: "In 1963 women gained the right to equal pay in the public sector and later in the semi-governmental sector and the Banks. In the private sector [the disparities in pay] continued." PYRGOS, *supra* note 108, at 55.

155. By 1992 only 12.2% of the economically active male and 14.2% of the economically active female population were employed in agriculture. See Antoniou, *Evolution*, *supra* note 95, at 82.

156. Many women whose husbands died during this period, needed to work to support their families. See Roussou, *supra* note 82, at 86.

157. See Stavrou, *Social Change*, *supra* note 112, at 75.

158. See Stavrou, *Social Change*, *supra* note 112, at 75. Stavrou points out that the labor shortages were so acute that the Government discussed with Trade Unions and Employers' Associations the possibility of importing workers from abroad. See Stavrou, *Social Change*, *supra* note 112, at 75.

women constituted 33.6 percent of the non-agricultural labor force.<sup>159</sup> The latest figures provided by the government indicate that, as of 1987, 46.9 percent of the female population over fifteen years of age participated in the workforce.<sup>160</sup>

Despite the large increase of women in the labor force, studies demonstrate that Greek Cypriot women continue to be segregated in lower paying occupations.<sup>161</sup> Part of the segregation has clearly been due to gender expectations. According to one author, for example, the 1981 Survey on the Employment Status of Cypriot Women, reported that employers believed that women generally were not committed to the job market even though the overall labor market experience of younger women exceeded that of comparable men.<sup>162</sup> They claimed that the disparity between the sexes was due to "women's greater absenteeism, voluntary turnover, and lower supervisory skills."<sup>163</sup> A later study of the position of women civil engineers found that family responsibilities, gender role expectations, and employer prejudice hinder the professional evolution of women. The survey showed that about half of the female respondents were discriminated against by employers with respect to recruitment, work on site, promotion, and salaries.<sup>164</sup>

Similarly, a report on town and country planning in Cyprus found that outdated notions about women persist.<sup>165</sup> The writer, when visiting the Ministry of Public Works, was told that there was no discrimination in employment.<sup>166</sup> However, although six of sixty engineers were women, none were senior engineers despite some having been qualified for twenty years.<sup>167</sup> Moreover, it appeared that men with less experience were readily

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159. See D.A. Djialli et al., *Cypriot Women in the Labour Force*, [ ] HIGH. TECH. INST. REV. 33 (1995) (on file with author).

160. See NAT'L REPORT, *supra* note 147, at 9.

161. In 1976, women's earnings were 55% of male earnings, increasing each year up to 66% in 1992. See Antoniou, *Evolution*, *supra* note 95, at 85. In addition, males highly outnumber females in professions and administrations where women are and have been traditionally underrepresented. See Antoniou, *Evolution*, *supra* note 95, at 85. In sales, service, and production occupations, however, women are overrepresented. See Antoniou, *Evolution*, *supra* note 95, at 85.

162. See Djialli et al., *supra* note 159, at 37.

163. Djialli et al., *supra* note 159, at 37.

164. See Djialli et al., *supra* note 159, at 38.

165. See Clara Greed, *Town and Country Planning in Cyprus 5-6* (1988) (unpublished manuscript) (on file with author).

166. See Greed, *supra* note 165, at 5.

167. See Greed, *supra* note 165, at 5.

promoted over women engineers.<sup>168</sup> The writer added that “[w]e were given the impression that this was because ‘women don’t stay,’ ‘they want an easy life and they need to pick up their children from school.’”<sup>169</sup>

In addition to discrimination, women’s integration in the work force has also been hampered by a lack of adequate childcare. A 1981 study found that the number and age of children a woman had operated as a potential restraint on her ability to enter the labor market.<sup>170</sup> The study indicated that the quality and quantity of childcare institutions prevented them from taking paid employment while they had small children.<sup>171</sup> Similarly, in 1991, a study found that “caring for children, household work, low wages, [and] distance between employment and residence [were] major constraints” on female participation.<sup>172</sup>

Although the number of state and private nurseries have increased considerably,<sup>173</sup> child-care considerations still keep women from entering the job market. A 1989 survey<sup>174</sup> found that more than ninety percent of children under two and one half years of age were under care of services not controlled by authorities.<sup>175</sup> In addition, most of the children between 2.5 and 4.5 years (sixty-five percent) were attending pre-primary education in state (thirty-six percent) and private (twenty-nine percent) day nurseries at which the working days and hours were not convenient for working mothers.<sup>176</sup> Moreover, another study revealed a lack of child

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168. See Greed, *supra* note 165, at 5.

169. Greed, *supra* note 165, at 5.

170. See Antoniou, Evolution, *supra* note 95, at 95 (citing WILLIAM J. HOUSE, CYPRIOT WOMEN IN THE LABOUR MARKET 47–52 (1985)).

171. See Antoniou, Evolution, *supra* note 95, at 95.

172. Antoniou, Evolution, *supra* note 95, at 95 (citing ELISAVET VOULGARI IOANNOU, THE EXPLOITATION OF ECONOMICALLY INACTIVE FEMALE POPULATION OF CYPRUS 30–40 (Industrial Training Authority of Cyprus, Nicosia ed., 1991)).

173. See NAT’L REPORT, *supra* note 147, at 30. The government reports that the number of government day care centers has increased from one in 1974 to 12 in 1994. See NAT’L REPORT, *supra* note 147, at 29. It also subsidizes community-run services, with the number of publicly supported day care centers increasing from 22 in 1980 to 61 in 1993. See NAT’L REPORT, *supra* note 147, at 29. In addition, in 1982 the government established a program for children six to 12 years old and by 1993 there were 26 centers for school-age children. See NAT’L REPORT, *supra* note 147, at 30.

174. See Antoniou, Evolution, *supra* note 95, at 96 (citing SUBCOMMITTEE OF THE PERMANENT CENTRAL AGENCY FOR WOMEN, THE CARING AND EDUCATION OF CHILDREN OF WORKING PARENTS, 1–16 (Nicosia 1989)).

175. See Antoniou, Evolution, *supra* note 95, at 96.

176. See Antoniou, Evolution, *supra* note 95, at 96.



care for children in primary education who returned home while their mothers were still at work.<sup>177</sup> Almost fifty percent of the children had nobody to care for them, while another forty percent were looked after by their grandmothers.<sup>178</sup>

Finally, there are indications that the workplace continues to be hostile to Greek Cypriot women. Although there were earlier indications that sexual harassment occurs in the Greek Cypriot workplace,<sup>179</sup> the Greek Cypriot government and private citizens have only very recently begun to acknowledge and to address the problem. A new group, the Initiative Against Sexual Harassment, is currently surveying the extent of sexual harassment in the Republic of Cyprus.<sup>180</sup> In addition, the government has been studying the problem and has made recommendations that the Ministry of Justice is currently considering.<sup>181</sup>

Thus, although many more Greek Cypriot women are working outside the home than in the past, they still encounter a variety of difficulties, such as discrimination in wages and promotions and sexual harassment. Moreover, their employment opportunities are often curtailed because of their childcare responsibilities. Although the government and private organizations are currently attempting to make the workplace more accommodating to the needs and concerns of women, these problems continue to hamper women from fully participating in the workforce.

#### 4. The Educational System

Until fairly recently, the educational system in Cyprus reflected the values of the traditional family, with education not considered important for girls because they were expected to become housewives and mothers. Not surprisingly, illiteracy was higher among females than males.<sup>182</sup>

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177. See Antoniou, *Evolution*, *supra* note 95, at 96.

178. See Antoniou, *Evolution*, *supra* note 95, at 96.

179. See Interview with Dr. Trigiorgi-Hadjipavlou, Adjunct Professor at the University of Cyprus, in Nicosia, Cyprus (Feb. 14, 1996). In her 1986 study of Cypriot women, Dr. Maria Trigiorgi-Hadjipavlou found that about 20% of those surveyed thought sexual harassment was a problem.

180. See Interview with Annie Pattichi, Director of the Initiative Against Sexual Harassment, in Nicosia, Cyprus (Mar. 15, 1996).

181. See Interview with Maro Varnidivou, Secretary General of the National Machinery for Women's Rights, in Nicosia, Cyprus (Feb. 9, 1996).

182. See Chrysalla Antoniou, *Gender Differences Within the System of Education in Cyprus*, 21 HIGHER TECHNICAL INST. REV. 61, 63 (1992) [hereinafter Antoniou, *Gender Differences*].

Initially under British rule, education of girls was restricted to daughters of wealthy families because it was expensive.<sup>183</sup> Later, when the British subsidized primary education, parents still hesitated to send their daughters because "the education of women was not taken seriously."<sup>184</sup> In addition, girls in the rural areas, where most Cypriots lived, after the age of ten years "were made to stay at home to prepare their dowry."<sup>185</sup>

Since the formation of the Republic, education has been considered important<sup>186</sup> and illiteracy rates have declined for both males and females.<sup>187</sup> Yet many gender differences continue to exist in the educational system. In secondary education between 1989–90, for example, 5.3 percent of female students were in technical and vocational courses as compared to 28.5 percent of male students.<sup>188</sup> On the other hand, 29.3 percent of females in secondary education followed the commercial and secretarial course as opposed to 13.7 percent of the boys.<sup>189</sup> As to college education, in 1988–89 although equal numbers of male and female students studied in Cyprus and overseas, the number of females in local institutions was higher than that of males, women constituting 54.6

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183. See PYRGOS, *supra* note 108, at 50.

184. PYRGOS, *supra* note 108, at 50.

185. PYRGOS, *supra* note 108, at 50. Pyrgos goes on to add:

After the Second World War, the number of girls who attended elementary school doubled. But even then, the education of girls was considered suspect. Even top pupils were deprived of higher education so that their . . . brothers[] could go to school.

In addition to that, the level of education acquired in Girls' High Schools was lower than that of Boys' Schools. If a daughter wanted to go to university she had to go to Boys' School. [T]his held back many girls.

Up to 1902, only one girl had graduated from a Boys' High School. . . .

In 1935 the Girls' School of Phaneromeni in Nicosia became part of the Pancyprrian Gymnasium and offered girls the same education as boys.

PYRGOS, *supra* note 108, at 50.

186. The Constitution provides every citizen the right to education. CYPRUS CONST. art. 20, para. 1.

187. See CYPRUS SOCIAL RESEARCH CENTRE, *supra* note 123, at 7. Antoniou points out that the census of 1960 mentioned the most remarkable increase in literacy was among females. See Antoniou, *Gender Difference*, *supra* note 182, at 63. In 1956 the illiteracy rate for the island was 33.1% and by 1960, it was only 18.1% and by 1975 it decreased to eight to 10%. See CYPRUS SOCIAL RESEARCH CENTRE, *supra* note 123, at 7.

188. See Antoniou, *Gender Differences*, *supra* note 182, at 63.

189. See Antoniou, *Gender Differences*, *supra* note 182, at 63.

percent of local students and 39.3 percent of students studying abroad.<sup>190</sup> In addition, during this time period a significantly smaller number of female students than male students were engaged in postgraduate study.<sup>191</sup> According to one researcher:

The lower participation by women in third level education is a clear example of the double standard still existing in Cyprus as far as the education of the two sexes is concerned. Parents are not so willing to invest in their daughter's education, while they consider their son's education as a first priority. In Eleni Nikita's words: "They . . . suffer privations in order to send their son to the gymnasium or the university even if he does not excel as a student."<sup>192</sup>

In addition to the above gender differences, there is a "hidden curriculum for gender"<sup>193</sup> which is reflected in teacher expectations and behavior as well as the social organization of the school. For example, in 1990–91, there were 208 male headmasters in primary education and sixty-five women headmasters out of a total of 1,229 male and 1,840 female staff members in the primary education system. In secondary education there were ninety male headmasters compared to ten women out of a total of 2,025 males and 1,710 females.<sup>194</sup> As one researcher stated, "[i]t is true that men are identified as figures of authority, much like fathers in the home, and this image is often endorsed by the figure

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190. See Antoniou, *Gender Differences*, *supra* note 182, at 63. Antoniou suggests that the higher number of girls in local institutions can be attributed to the lower costs and availability of short duration courses that mostly attract female students, such as secretarial training and nursing. She also points out that parents still prefer to have their daughters under their protection, thus sending them to local institutions. Nonetheless, she does note the significant increase in female students studying abroad, from 24.4% in 1971–72 to 39.3% in 1992. See Antoniou, *Gender Differences*, *supra* note 182, at 63.

191. See Antoniou, *Gender Differences*, *supra* note 182, at 63 (giving the number of male students as 539 and the number of female students as 212).

192. Antoniou, *Gender Differences*, *supra* note 182, at 63 (quoting Eleni S. Nikita, *CYPRIOT WOMAN RISE AND DOWNFALL*, 8 (1975)). Roussou notes that most male postgraduate students are married and are free to leave their wife and children to study abroad. On the other hand, even if a woman persuades her husband that she could study abroad, society strongly criticizes her "for neglecting her main duties for something which is not essential for her." See Roussou, *supra* note 82, at 293.

193. Roussou, *supra* note 82, at 61.

194. See Roussou, *supra* note 82, at 64.

of the headmaster who rules over a primary school largely staffed by women."<sup>195</sup>

Finally, not surprisingly, there are no courses on gender issues per se and no established policies for examination of gender differences in the education system.<sup>196</sup> The government is aware of its importance, however, and is proud of the fact that private colleges are currently planning to introduce modules on gender studies into their curricula.<sup>197</sup> Thus, while female students are receiving more education than they did in the past, many females are not being educated at as high a level as their male counterparts. In addition, they are being educated in a system where women are at the bottom of the hierarchy and where, until recently, little attention has been given to gender issues.

## 5. The Government

The Republic of Cyprus was formed in 1960,<sup>198</sup> and for the first time the constitution provided equal political rights for women.<sup>199</sup> Nonetheless, the participation of women in the Greek Cypriot Parliament has been very limited.<sup>200</sup> In 1980, Parliament had its first and only female member.<sup>201</sup> One woman Member of Parliament (MP) was elected

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195. Roussou, *supra* note 82, at 64.

196. See NAT'L REPORT, *supra* note 147, at 12.

197. See NAT'L REPORT, *supra* note 147, at 12.

198. Cyprus was a British colony from 1878 to 1960. See Sir David Hunt, *The British Period: 1878-1960*, in FOOTPRINTS IN CYPRUS, *supra* note 1, at 232, 232. It attained its independence in 1960 after an armed struggle. The struggle was the culmination of the Greek Cypriot desire for political union with Greece, or *enosis*, as evidenced by a vote in 1950 that the Church organized on this question. Out of 224,747 people, 215,108 or 96% voted for *enosis*. Greeks and Greek Cypriots believed that the Turkish government had no right to intervene and was not likely to intervene. The negotiations for the constitution were between Athens and Ankara, later being accepted by the British and the Cypriots. The Constitution was based on rejection of *enosis* and partition and stringent safeguards for the minority. See Hunt, *The British Period: 1878-1960*, in FOOTPRINTS IN CYPRUS, *supra* note 1, at 257-59.

199. The Constitution provides that every citizen has the right to vote. CYPRUS CONST. art. 31.

200. There are eighty seats in the House of Representatives. Fifty-six are allocated to Greek Cypriots and 24 are reserved for Turkish Cypriots, in compliance with the ratio of seven to three Greek Cypriots to Turkish Cypriots provided for in the Constitution. See NAT'L REPORT, *supra* note 147, at 69; CONST. CYPRUS art. 62. Since the withdrawal of the Turkish Cypriot members, the Parliament has been functioning with only the Greek Cypriot members. See NAT'L REPORT, *supra* note 147, at 69.

201. See NAT'L REPORT, *supra* note 147, at 22.

in 1985 and three women MP's were elected in 1991.<sup>202</sup> In 1994 there were two women MP's<sup>203</sup> and in the May 1996 elections, three women were elected to Parliament.<sup>204</sup>

In addition, Greek Cypriot women have held almost no positions in the highest levels of government. In 1980 and 1985, for example, not one woman held any of the approximately 120 high government positions.<sup>205</sup> In 1992, women held only four out of the 128 high level positions.<sup>206</sup> Similarly, women previously played no role in the international sphere.<sup>207</sup> From 1960-77, there were no women in the foreign service.<sup>208</sup> More recently, however, women have begun to be involved in the foreign service. In 1994, more than ten percent of the diplomatic staff of the ministry were women and currently out of a total of ten departments, two—or twenty percent—are headed by women diplomats.<sup>209</sup>

Thus, while the Cypriot constitution provides for the equal political rights of women, this right has not yet become a reality. The government has always been directed by men. While there has been some increase in women's participation, it continues to be a highly male dominated institution.

## 6. The Limited Information on Cypriot Women

The omission of references to women in Cypriot texts is a long-standing tradition that continues today. As Mary Pyrgos stated when studying the role of Cypriot women in the Ottoman empire:

On reading the plethora of texts written at the time one would think that particularly in the first two centuries of Ottoman rule, Cyprus was inhabited exclusively by men. Or rather by two categories of men: laymen and clergy. In other words those who held power. Nowhere are women's names mentioned.

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202. See NAT'L REPORT, *supra* note 147, at 22.

203. See NAT'L REPORT, *supra* note 147, at 22.

204. See Interview with Demetres Vryonides, Greek Cypriot attorney, in New York, N.Y. (July 25, 1996).

205. In 1980, the 121 high level positions were all held by men; in 1985, the 117 high level positions were all held by men. See NAT'L REPORT, *supra* note 147, at 22.

206. See NAT'L REPORT, *supra* note 147, at 22.

207. See NAT'L REPORT, *supra* note 147, at 23.

208. See NAT'L REPORT, *supra* note 147, at 23.

209. See NAT'L REPORT, *supra* note 147, at 23.

Nowhere are their activities mentioned. No one seems to take them seriously, and no one writes about them.<sup>210</sup>

Maria Roussou discusses the continuing omission of women in twentieth century studies of Cypriot society.<sup>211</sup> She points out that in *The Greek Gift*,<sup>212</sup> Peter Loizos describes life in a Greek Cypriot village almost exclusively from a male point of view.<sup>213</sup> Years later Loizos acknowledged that, although he probably could have interviewed women, he did not. "The explanation given for this omission is, of course, one of 'male bias'—not [his] alone, but also that of the men of Argaki who made it clear to [him] that the kind of kinsman they wanted was the kind who spent his time with other men."<sup>214</sup> She also points out that in his work *Social Change and Urbanization in Cyprus*,<sup>215</sup> Attalides only interviews males.<sup>216</sup> According to Roussou, until 1982 when *The Cypriot Woman*<sup>217</sup> was published and when the International Labour Organisation (ILO) expert William J. House began to study "discrimination and segregation of women workers in Cyprus,"<sup>218</sup> the 'woman question' was very lightly touched upon once or twice a year in social gatherings.<sup>219</sup>

Since the publication of *The Cypriot Woman* in 1982, there has been very little additional scholarship on Cypriot women. In the Cyprus National Report to the Fourth World Conference on Women, the government notes three scholars whose research focuses on Cypriot women: Chrystalla Antoniou, Maria Roussou, and Stavros Stavrou.<sup>220</sup> Chrystalla Antoniou's and Maria Roussou's work have not been published.<sup>221</sup> Two of the three pieces of Stavros Stavrou's work have also not

210. PYRGOS, *supra* note 108, at 39.

211. See Roussou, *supra* note 82, at 28.

212. PETER LOIZOS, *THE GREEK GIFT* (1975).

213. See Roussou, *supra* note 82, at 17.

214. Roussou, *supra* note 82, at 17–18 (quoting LOIZOS, *HEART GROWN BITTER*, *supra* note 84, at 194)).

215. MICHAEL ATTALIDES, *SOCIAL CHANGE AND URBANIZATION IN CYPRUS* (1981).

216. See Roussou, *supra* note 82, at 18.

217. *THE CYPRIOT WOMAN*, *supra* note 133 (first published in Greek in 1982).

218. See WILLIAM J. HOUSE, PLANNING BUREAU & DEP'T OF STATISTICS AND RESEARCH, *POPULATION, EMPLOYMENT PLANNING AND LABOUR FORCE MOBILITY IN CYPRUS: TERMINAL REPORT* (1982).

219. See Roussou, *supra* note 82, at 44.

220. NAT'L REPORT, *supra* note 147, at 60–62.

221. See Antoniou, *Evolution*, *supra* note 95; Roussou, *supra* note 82.

been published.<sup>222</sup> The one additional published work on Cypriot women, *The Cypriot Woman at a Glance*, published in 1993, is a short synopsis of an unpublished three volume work about Cypriot women.<sup>223</sup>

The limited research on Greek Cypriot women is a further indication of the marginalization of women in Greek Cypriot society. The few scholars researching in this area have found the task extremely difficult because there is little information available.<sup>224</sup> Moreover, the published works on women make almost no reference to the issue of domestic violence.<sup>225</sup> Thus, the lack of written accounts of the experience of Cypriot women, and particularly of domestic violence, are another indication that the male point of view continues to control Cypriot society.

*B. Efforts to Improve the Status and Treatment  
of Greek Cypriot Women*

The Turkish occupation of 1974 caused many Greek Cypriot women, previously oblivious to matters outside the home, to focus on their treatment in the public sphere. As one scholar explained:

[T]he hard experience of the war and its consequences, the experience of sudden death or loss of beloved sons, husbands and other close relatives in some degree, shocked women out of their quietism. They suddenly woke up from the peaceful lace-making gatherings and coffee-meetings where conversation had been predominantly about family life and gossip in their own secure domestic atmosphere. Instead, they found themselves refugees in tents and unfinished buildings or worse. . . .

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222. See Stavrou, Readers' Attitude, *supra* note 109; Stavrou, Status, *supra* note 102.

223. The author, Mary Pyrgos, has not been able to publish this work because of lack of funding and does not anticipate publication in the near future. See Interview with Mary Pyrgos, *supra* note 80.

224. Roussou specifically states in her dissertation that "[v]ery little has been written on the position of Greek Cypriot women . . . ." Roussou, *supra* note 82, at 28. Antoniou, Pyrgos, and Stavrou each discussed with me their frustration with the lack of research in this area. See Interview with Chrysalla Antoniou, in Nicosia, Cyprus (Feb. 21, 1996); Interview with Mary Pyrgos, *supra* note 80; Interview with Stavros Stavrou, in Nicosia, Cyprus (Mar. 4, 1996).

225. In *The Cypriot Woman*, and in *The Cypriot Woman at a Glance*, there is no discussion of domestic violence in modern Cypriot society. *THE CYPRIOT WOMAN*, *supra* note 133; *PYRGOS*, *supra* note 108.

This shock politicized women.<sup>226</sup>

In addition, as a result of the Turkish occupation, some Greek Cypriot women lost their husbands—"their 'male protector'"—and were placed "in the position of 'breadwinner.'" <sup>227</sup> Because there was an excess of labor, employers had a "buyer's market" and often felt that "available jobs should go to 'men because they are financially responsible for their families' . . . ." <sup>228</sup> Thus, these women "were forced to take any job available, however menial." <sup>229</sup>

The United Nations' efforts to improve the treatment of women provided support and focus for Greek Cypriot women's concerns and influenced the government's response. In 1975, following the First International Conference on Women, the General Assembly of the United Nations proclaimed 1975–85 as the United Nations Decade for Women.<sup>230</sup> Responding to the United Nations Decade for Women, the Greek Cypriot government appointed an interministerial committee in 1979 to study the position of women in its society and to focus on their problems.<sup>231</sup> Further, in 1983 the government established the Committee for the United Nations Decade for Women.<sup>232</sup> The Minister of Justice was chair of the committee and several non-governmental organizations participated.<sup>233</sup> The committee's goal was to make recommendations to

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226. Roussou, *supra* note 82, at 85–86. Both Mary Pyrgos, founder and first president of the Association for Equal Rights and Responsibilities [hereinafter Equal Rights Association], and Alikı Hadjigeorgiou, current President, attribute their activism to their awakening after the Turkish occupation. See Interview with Mary Pyrgos, *supra* note 80; Interview with Alikı Hadjigeorgiou, President of the Association for the Prevention and Handling of Domestic Violence, in Nicosia, Cyprus (Feb. 29, 1996).

227. Roussou, *supra* note 82, at 86.

228. Roussou, *supra* note 82, at 86–87. Once in the labor force, women's perceptions of themselves began to change. For example, Alikı Hadjigeorgiou told me of her friend whose husband was missing in action after the Turkish occupation. Her friend had had two children and had never worked outside the home. Because her husband had been in charge of the household and had made all the decisions, she could barely function for about a year after his disappearance. Then she went to work. After she received her first paycheck, she told Ms. Hadjigeorgiou that she had changed, and that she now considered herself her husband's equal. See Interview with Alikı Hadjigeorgiou, *supra* note 226.

229. PYRGOS, *supra* note 108, at 56.

230. See NAT'L REPORT, *supra* note 147, at 14.

231. See NAT'L REPORT, *supra* note 147, at 14.

232. See NAT'L REPORT, *supra* note 147, at 14.

233. See NAT'L REPORT, *supra* note 147, at 14.



improve problems with the status of women.<sup>234</sup> The committee dissolved in 1985, when the United Nations Decade for Women ended.<sup>235</sup>

Also in 1983, the government established two law reform commissions, one to modernize family law and remove its discrimination against women and the other to focus on women's rights in the labor market.<sup>236</sup> These commissions recommended changes in legislation in both these areas, which led to laws addressing former inequities.<sup>237</sup> In addition, in 1988 the government established the National Machinery for Women's Rights,<sup>238</sup> an entity that is part of the Ministry of Justice and Public Order and of which the Minister is the chair.<sup>239</sup> The Permanent Secretary generally supervises the operation and is deputy chairperson of the National Machinery. The Machinery "focus[es] on the elimination of legal discrimination against women and the promotion of real equality

234. See NAT'L REPORT, *supra* note 147, at 14.

235. See NAT'L REPORT, *supra* note 147, at 14.

236. See NAT'L REPORT, *supra* note 147, at 15.

237. In its National Report to the Fourth World Conference on Women, the Cypriot government claims to have taken the following measures:

In the labor area, the Republic of Cyprus ratified ILO Convention No. 100 on Equal Pay for Work of Equal Value (No. 213) (1987) (Cyprus) and enacted the law on Equal Pay No. 158 (1989) (Cyprus). See NAT'L REPORT, *supra* note 147, at 16. In addition, the Legislature passed the Law on the Protection of Maternity, No. 54 (1987) (Cyprus) and No. 66 (1988) (Cyprus), and gave women the same tax allowance and deduction rights as men. See NAT'L REPORT, *supra* note 147, at 16.

In the family law area, Parliament amended the constitution in 1989, effective January 1, 1990, to allow "civil marriage as an alternative to ecclesiastical marriage" and for the setting up of family courts to deal with family issues. See NAT'L REPORT, *supra* note 147, at 16 (noting the passage of The First Amendment of the Constitution Law of 1989, No. 95 (1989) (Cyprus), Law on Civil Marriages No. 21 (1990) (Cyprus), and Law on Family Courts No. 23 (1990) (Cyprus)). After the amendment of the Constitution, several laws were passed to respond to former deficiencies in the law. In 1990, the Law on Parental Care gave women and men equal rights to parental care over their children. See NAT'L REPORT, *supra* note 147, at 16 (noting passage of the Law on Parental Care No. 216 (1990) (Cyprus)). In 1991, Parliament passed a property rights bill which granted women fuller rights concerning family property. NAT'L REPORT, *supra* note 147, at 16 (noting passage of the Property Rights of Spouses and Alimony, No. 232 (1991) (Cyprus)).

Recently, after a meeting with the National Council for Women's Rights, President Clerides promised to take steps to assist women's career advancement in the civil service. See Jean Christou, *Women to Get Boost Up Career Ladder*, CYPRUS MAIL, Feb. 6, 1996, at 4.

238. In 1994 the Council of Ministers reformed the entity. Before the 1994 reform, the National Machinery for Women's Rights was called Permanent Central Agency for Women's Rights. See NAT'L REPORT, *supra* note 147, at 18.

239. See NAT'L REPORT, *supra* note 147, at 17.

between men and women.”<sup>240</sup> The Machinery is composed of several subgroups: the Council for Women’s Rights, which includes representatives of women’s organizations and trade unions;<sup>241</sup> the National Committee, which is composed of representatives of all government departments and several non-governmental organizations; the Interministerial Committee, which consists of the Officers for Women’s Rights, from which each ministry has an appointee; and the General-Secretariat, which is under the Ministry of Justice and Order and headed by the Secretary General.<sup>242</sup>

At the same time that the government began to address issues pertaining to women, private citizens were becoming very concerned about domestic violence. This issue came to the public consciousness in 1983 when several women were murdered by their husbands.<sup>243</sup> At that time, the Association for Equal Rights and Responsibilities<sup>244</sup> conducted publicized seminars on violence.<sup>245</sup> The response of women who were victims of domestic violence was overwhelming.<sup>246</sup> Members of this group, therefore, scheduled a meeting with members of the Department of Welfare, Department of Education, Office of the Attorney General, and other interested groups to determine how to deal with the problem of domestic violence.<sup>247</sup> Because none of these groups knew how to deal with this problem, the Association established a hotline to help it handle the issue.<sup>248</sup>

The efforts of the members of the Association for Equal Rights and Responsibilities to obtain funding to deal with the issue of domestic

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240. NAT’L REPORT, *supra* note 147, at 17.

241. See NAT’L REPORT, *supra* note 147, at 17. Organizations can become members of the Council by applying to the Ministry of Justice and Public Order. The Council of Ministers make the final determinations about membership. See NAT’L REPORT, *supra* note 147, at 18.

242. See NAT’L REPORT, *supra* note 147, at 17–18. According to Alikí Hadjigeorgiou, the central committee of this group has the real power. Although the Family Planning Association and the Association for the Prevention and Handling of Domestic Violence have tried repeatedly to be placed on the committee, their requests have been denied. See Interview with Alikí Hadjigeorgiou, *supra* note 226.

243. See Interview with Mary Pyrgos, *supra* note 80.

244. Mary Pyrgos and others formed this organization in 1978 to deal with issues affecting women such as divorce, equal pay, and abortion. See Interview with Mary Pyrgos, *supra* note 80.

245. See Interview with Mary Pyrgos, *supra* note 80.

246. See Interview with Mary Pyrgos, *supra* note 80.

247. See Interview with Mary Pyrgos, *supra* note 80.

248. See Interview with Mary Pyrgos, *supra* note 80.

violence did not initially meet with success.<sup>249</sup> However, the Association for the Prevention and Handling of Domestic Violence [hereinafter Domestic Violence Association] and the Center it sponsors are now well-recognized institutions, receiving government funding from the Department of Labor.<sup>250</sup> The Center has a full-time psychologist, a part-time legal advisor, and a group of volunteers who answer telephone calls from victims of domestic violence throughout the country.<sup>251</sup> The Center is also a well-respected voice on issues of domestic violence.<sup>252</sup> The Domestic Violence Association and its Center, however, are the only organizations in the Republic of Cyprus working primarily on these issues. Their work is severely hampered because the Republic does not have a battered woman's shelter for victims of domestic violence who wish to leave their spouses.<sup>253</sup>

### *C. The Violence in the Family Law*<sup>254</sup>

Despite the progress that the Center has made in addressing the problem of domestic violence, statistics indicate that domestic violence

249. See Interview with Mary Pyrgos, *supra* note 80.

250. See Interview with Alik Hadjigeorgiou, *supra* note 226. In 1996, the Domestic Violence Association received government funding of nine thousand pounds (approximately \$18,000.00). According to Alik Hadjigeorgiou, however, this sum was far from sufficient. Indeed, the Domestic Violence Association was so short of funds at one point that it had to stop its employees' paychecks. See Interview with Alik Hadjigeorgiou, *supra* note 226.

251. See Interview with Alik Hadjigeorgiou, *supra* note 226. According to Myria Vassiliadou, a volunteer at the Center for the Prevention and Handling of Domestic Violence who is working on her Ph.D. with the University of Kent on the perceptions and attitudes toward women in Cyprus, the limited understanding of the dynamics of domestic violence in Greek Cypriot society is even reflected in the attitudes of some of the Center's volunteers. Although the Center personnel train all volunteers in the dynamics of domestic violence, Vassiliadou reported that, on more than one occasion, she heard other volunteers encouraging domestic violence victims to ignore their husbands' violence. See Interview with Myria Vassiliadou, Doctoral Student, in Nicosia, Cyprus (Feb. 6, 1996).

252. The organization was instrumental, for example, in the drafting and passing of the Violence in the Family Law. See Interview with George Stavrinakis, Law Commissioner, in Nicosia, Cyprus (Jan. 26, 1996).

253. This is a matter of great concern to members of the Domestic Violence Association, who have been actively advocating for funds to start a shelter. See Interview with Atlanti Nicolaou, Board Member of the Domestic Violence Association, in Nicosia, Cyprus (Apr. 4, 1996).

254. The Violence in the Family (Prevention and Protection of Victims) Law, No. 47(I), (1994) (Cyprus).

continues to increase among Greek Cypriots.<sup>255</sup> According to the government, there were 332 reported assaults by husbands against their wives in 1990, 476 in 1991, 527 in 1992, and 687 in 1993.<sup>256</sup> Moreover, persons familiar with the problem of domestic violence believe that these figures significantly underrepresent the extent of the problem.<sup>257</sup> According to Myrian Paponisphrou, the Director of the Division of Women and Children in the Welfare Department and the recently appointed chair of the Advisory Committee for the Violence in the Family Act, these statistics represent only a small percentage of the violence that husbands commit against their wives.<sup>258</sup> As Chairperson of the National Advisory Committee under the Violence in the Family Act, she hopes to establish effective mechanisms to develop information about the extent of the problem.<sup>259</sup>

Ms. Paponisphrou's view that the government statistics do not fully reveal the extent of the problem is shared by Stavria Thalassi, the full-time psychologist at the Center. According to Ms. Thalassi, the Center receives between four and seven telephone calls a day from women who have been abused by their husbands.<sup>260</sup> Although the Center does not have exact statistics on the percentage of telephone calls that are repeat calls, she estimates that less than half of the calls are from persons who have previously called the Center.<sup>261</sup> Thus, the Center's figures indicate that the rate of violence is substantially higher than the government figures would indicate.

In addition, the visibility of domestic violence is high. During the month of February 1996 alone, two men were suspected of viciously attacking their wives. One was being sought by police for allegedly stabbing his wife twenty-five times.<sup>262</sup> The second was being held on suspicion of murder after his wife allegedly fell from her second floor

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255. See NAT'L REPORT, *supra* note 147, at 51.

256. See NAT'L REPORT, *supra* note 147, at 51.

257. See Interview with Myrian Paponisphrou, Director of the Division of Women and Children of the Department of Welfare, in Nicosia, Cyprus (Jan. 31, 1996).

258. See Interview with Myrian Paponisphrou, *supra* note 257.

259. See Interview with Myrian Paponisphrou, *supra* note 257.

260. See Interview with Stavria Thalassi, *supra* note 118.

261. See Interview with Stavria Thalassi, *supra* note 118.

262. See *Syrian Wanted for Knife Attack in North?*, CYPRUS WKLY., Feb. 23-29, 1996, at 8.

apartment.<sup>263</sup> Two coroners ruled that many of the injuries she received were caused by blows inflicted prior to the fall.<sup>264</sup>

In response to the increasing domestic violence in Greek Cypriot society, Mary Pyrgos, founder and former president of the Equal Rights Association, approached Mr. George Stavrinakis, Law Commissioner, about drafting a law that addressed the issue of domestic violence.<sup>265</sup> Together they prepared the Violence in the Family Law,<sup>266</sup> which Parliament enacted in June 1994. This law was designed to "remedy the weaknesses of the existing available judicial and administrative procedures in cases of violence within the family and also to provide the necessary support and assistance to victims."<sup>267</sup>

The Act provides a broad definition of violence. Section 3.-(1) of the law defines violence as "any unlawful act or behavior which results in direct actual physical, sexual or psychological injury to any member of the family and includes violence used for purpose of sexual intercourse without the consent of the victim as well as for purpose of restricting its liberty."<sup>268</sup> The Act also increases the penalties for certain criminal acts when committed against members of the family<sup>269</sup> and recognizes marital

263. See Charlie Charalambous, *Woman Was Not Killed by Fall Says Coroner*, CYPRUS MAIL, Feb. 29, 1996, at 2.

264. See Charalambous, *supra* note 263, at 2.

265. See Interview with Mary Pyrgos, *supra* note 80.

266. See Interview with Mary Pyrgos, *supra* note 80; Interview with George Stavrinakis, *supra* note 252.

267. NAT'L REPORT, *supra* note 147, at 19.

268. The Violence in the Family (Prevention and Protection of Victims) Law, No. 47(1), § 3(1) (1994) (Cyprus).

269. The Violence in the Family (Prevention and Protection of Victims) Law, No. 47(1), § 4(1) (1994) (Cyprus) provides:

The offences set out in the first column of subsection (2) below are committed by one member of the family against another shall be treated for the purposes of this Law as particularly aggravated and the Court when imposing sentence in the cases where the charge is based on the sections of the Criminal Code mentioned in the second column of subsection (2) may impose the increased penalties set out in the third column in lieu of the penalty provided in the aforesaid section of the Criminal Code.

Some of the offences listed in section 4(2) include:

<i>Offence</i>	<i>Section</i>	<i>Penalty</i>
(a) Indecent assault on females	151	The imprisonment is increased from two to five years
(b) Indecent assault on males	152	The imprisonment is increased from two to five years

rape as a crime.<sup>270</sup> Further, it provides for the issuing of inhibition orders which prohibit the accused from entering or staying in the marital home.<sup>271</sup> Although the Act is designed primarily to protect victims, it is also designed to help abusers. Thus, section 7 of the Act provides for therapeutic treatment as an alternative to incarceration.<sup>272</sup>

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270. The Violence in the Family (Prevention and Protection of Victims) Law, No. 47(1), § 5 (1994) (Cyprus) provides:

Notwithstanding the provisions of any law, the offence of rape contrary to sections 144 and 145 of the Criminal Code or the offence of attempted rape contrary to section 146 of the same Law may be committed by a husband against his wife if the facts of the case would have constituted the offence of rape or of attempted rape had the victim and the perpetrator not been married and is punishable as the Criminal Code provides.

271. The Violence in the Family (Prevention and Protection of Victims) Law, No. 47(1), § 8(1) (1994) (Cyprus) provides:

The Court may issue against an accused person for any offence of violence within the scope of this Law an order for such a period and subject to such conditions as the Court may impose whereby the accused is inhibited from entering or staying in the marital home. Such an order is called an 'inhibition order.'

Section 8(2) of the Act provides:

The requirements for the issue of an inhibition order are:

- (a) to be proved to the satisfaction of the Court that the accused has a history of repeated acts of violence against members of his family or has at least two previous convictions in the last two years for similar offences;
- (b) the violence used to have caused such actual physical, sexual or psychological injury as to endanger the life, corporeal integrity or sexual or psychological health of the victim; or
- (c) the accused refuses to submit himself to treatment for selfcontrol [sic] either imposed as a requirement in applying the provisions of section 33 of Criminal Code or otherwise.

The Violence in the Family Law makes clear that Cypriot society still tolerates a degree of violence against women because this law only applies to circumstances where the victims have been struck more than once.

272. The Violence in the Family (Prevention and Protection of Victims) Law, No. 47(1), § 7(1) (1994) (Cyprus) provides:

The Court, if it considers it expedient so to do, may in lieu of imposing any sentence, with the consent of the accused, place him on probation under the Probation of Offenders Law with a special requirement that he shall submit himself to treatment for selfcontrol [sic] by specialists to such behaviour or with other requirements as the Court may consider necessary for preventing the repetition of acts of violence within the scope of this Law.

In order to make the Act work, Ms. Pyrgos and Mr. Stavrinakis determined that it would be necessary to include a compulsory witness provision.<sup>273</sup> The draft they prepared, therefore, included the following provision:

Notwithstanding the provisions of section 14 of the Evidence Law the husband or wife as the case may be of a person charged with an offence of violence within the meaning of this Law shall be a competent witness and a compellable witness against the accused.<sup>274</sup>

Before Mr. Stavrinakis presented the Act to the Legal Affairs Committee,<sup>275</sup> he held a series of informal meetings with members of various governmental departments, workers for the Association and other

Thus far this provision has not been implemented. According to Stavria Thalassi, if a judge were to order an abuser to obtain treatment, there would be nobody trained to provide this kind of treatment. *See* Interview with Stavria Thalassi, *supra* note 118. In response to this problem, Mary Pyrgos has started a private project to train psychologists to work with batterers so that this section of the Act can be implemented. *See* Telephone Interview with Mary Pyrgos, Former President of the Association for the Prevention and Handling of Domestic Violence (Mar. 20, 1996).

273. *See* Interview with Mary Pyrgos, *supra* note 80.

274. This language was provided to me by George Stavrinakis, Law Commissioner. Section 14 of the Evidence Law provides:

- (1) Subject to subsection (2), in criminal proceedings against any person, the husband or wife, as the case may be, of such person shall not be a competent witness for the prosecution against that person nor a compellable witness against any other person jointly charged with him or her.
- (2) The husband or wife of a person charged-
  - (a) with inflicting or attempting to inflict any bodily injury or violence upon him or her or upon any of his or her children;
  - (b) with an offence under any of the sections of the Criminal Code, set out in the Schedule to this Law, or under section 54 of the Children Law, shall be a competent witness for the prosecution against the person so charged and a compellable witness against any other person jointly charged with him or her.
- (3) Nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose any communication made to her by her husband during the marriage.

EVID. LAW § 14 (Cyprus).

275. The Legal Affairs Committee is the Parliamentary committee that considers proposed legislation. *See* Interview with Efsthios Efsthioiu, Former Chair of the Legal Affairs Committee, in Nicosia, Cyprus (Feb. 9, 1996).

interested parties to discuss the legislation.<sup>276</sup> They all agreed that the compulsory witness provision was necessary.<sup>277</sup> At the conclusion of these meetings, Mr. Stavrinakis sent the bill to the Ministry of Justice.<sup>278</sup> The Ministry of Justice approved the proposed Act, including the compulsory witness provision, and sent it to the Legal Affairs Committee for its consideration.<sup>279</sup>

The Legal Affairs Committee is composed of thirteen members, representing all of the various political parties. At its meetings the supporters of the law reviewed the proposal, article by article, with the committee. Although the committee responded to the Act favorably, the compulsory witness provision caused a great deal of controversy.<sup>280</sup> Ultimately, the Committee sent the Proposed Act to Parliament without the compulsory witness provision.<sup>281</sup> Because Mr. Efstathios Efstathiou, chair of the committee at that time, supported the compulsory witness provision, he chose to bring the issue before the full session of Parliament.<sup>282</sup> However, after some members of Parliament expressed their concern that the provision would cause the dissolution of families,<sup>283</sup> he did not pursue the issue because he feared that to do so would place the whole Violence in the Family Law in peril.<sup>284</sup> Parliament then passed The Violence in the Family Law unanimously.<sup>285</sup>

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276. See Interview with George Stavrinakis, *supra* note 252.

277. See Interview with George Stavrinakis, *supra* note 252.

278. See Interview with George Stavrinakis, *supra* note 252.

279. See Interview with Maro Varnidivou, Secretary General of the National Machinery for Women's Rights, in Nicosia, Cyprus (Feb. 9, 1996).

280. See Interview with Efstathios Efstathiou, *supra* note 275.

281. See Interview with Efstathios Efstathiou, *supra* note 275.

282. See Interview with Efstathios Efstathiou, *supra* note 275.

283. The Communist and Democratic parties were against the provision because of concerns about family unity. See Interview with Efstathios Efstathiou, *supra* note 275.

284. See Interview with Efstathios Efstathiou, Former Chair of the Legal Affairs Committee, in Nicosia, Cyprus (Mar. 26, 1996).

285. See Interview with Efstathios Efstathiou, *supra* note 284. In order to alleviate some of the concerns of members of Parliament, the following proposed variation of the bill was also offered:

Notwithstanding the provisions of section 14 of the Evidence Law, the husband or wife as the case may be of a person charged with an offence of violence within the provisions of this Law shall be a competent witness and with leave of the Court a compellable witness against the accused.

However, this provision was also not acceptable to members of Parliament. See Interview with George Stavrinakis, *supra* note 252.



The failure of the final bill to include the compulsory witness provision was very disappointing to many of the proponents of the legislation.<sup>286</sup> Workers for the Domestic Violence Association, for example, had lobbied hard for inclusion of this provision. Their perception, based on their experience at the Center, was that there is a serious domestic violence problem in Cyprus and that women regularly withdrew the complaints they filed against their abusers from fear. They believed that it would not make it any harder for women to complain if there were a compulsory witness provision.<sup>287</sup>

Since the Violence in the Family Law has been enacted, few cases have been prosecuted under it.<sup>288</sup> Supporters of the bill have identified several reasons for the limited number of prosecutions thus far. George Stavrinakis posits that, because the Act provides that both police and Family Counsellors<sup>289</sup> can take and investigate complaints, the police are confused as to how they should proceed.<sup>290</sup> In addition, Kate Clerides, a member of Parliament who supported the measure, believes that the Act is not working because of the taboos that still exist pertaining to discussions of domestic violence and budgetary issues.<sup>291</sup> Others point out the fact that it has taken time to implement some of the Act's provisions.<sup>292</sup>

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286. See Interview with Katia Constantinou, *supra* note 118.

287. See Interview with Katia Constantinou, *supra* note 118.

288. According to statistics provided by Andreas Christofides, the Director of Research and Development for the Police Department, there were 250 domestic violence complaints filed with the police in 1995. Out of that number, 64 were taken to court and 59 are still awaiting trial. In eight of the cases taken to court, there were convictions. See Interview with Andreas Christofides, Director of Research and Development for the Police Department, in Nicosia, Cyprus (Apr. 4, 1996).

Remarkably, the government prides itself in having only four to 10% of assault cases in the family brought before justice, acknowledging that the police make every effort to bring spouses together without any further judicial measures. See NAT'L REPORT, *supra* note 147, at 51. This approach by the police is particularly troubling given the small number of women in the police department. In 1994, there were 198 women and 3680 men in the department. See NAT'L REPORT, *supra* note 147, at 53. As of 1994, not a single woman had served as superintendent of police. See NAT'L REPORT, *supra* note 147, at 53.

289. See *infra* note 429 and accompanying text.

290. See Interview with George Stavrinakis, *supra* note 252.

291. See *Don't take us for granted—Kate Clerides*, CYPRUS WKLY., Mar. 15–21, 1996, at 7. ("[S]ocial taboos surrounding the issue and no means of independent support rendered the changes ineffective."). The original bill included a provision for an independent fund to help assist in its implementation, but that part of the bill was not approved by Parliament. See Interview with George Stavrinakis, *supra* note 252.

292. Mary Pyrgos, for example, noted that the self-control groups for offenders provided for in the Act were still not operating as of January 30, 1996. See Interview with Mary Pyrgos, *supra* note 80.

Although proponents of the compulsory witness provision acknowledge several reasons for the limited number of prosecutions under the Act thus far, some continue to believe that the Act must have a compulsory witness provision to work effectively.<sup>293</sup> Therefore, in consultation with several supporters of the legislation, Stavrinakis has included the following modified compulsory witness provision in his proposed amendments to the bill:

Notwithstanding the provisions of section 14 of the Evidence Law, the spouse of the defendant charged with an offence of violence within the meaning of the present law shall be a competent witness and upon the leave of the Court a compellable witness. The Court before granting a leave for the compellability of a spouse to testify against the other spouse shall take into consideration, *inter alia*:

- (a) threats, pressures, that may be put on the witness not to testify;
- (b) the condition of the relationship of the spouses and the possibility of saving the marriage;
- (c) the possibility of repetition of acts of violence.<sup>294</sup>

Mr. Stavrinakis is planning to send the proposed amendments to the Legal Affairs Committee in the near future.<sup>295</sup>

### PART III. FEMINIST THEORY

This section gives a short background on three strands of feminist theory that are particularly applicable to the issue of whether victims of domestic violence should be required to testify against their abusers. First, it examines formal equality, the approach that has traditionally been applied to this issue. Next, it explores Catharine MacKinnon's nonsubordination theory, an approach that has recently been considered in the Republic of Cyprus and in some jurisdictions of the United States. Finally, it discusses nonsubordination theory modified by partial agency

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293. See Interview with George Stavrinakis, Myrian Papaonisiphrou, Kate Kleridou, Maro Varnavidou, and two board members of the Association, in Nicosia, Cyprus (Feb. 27, 1996).

294. Law Which Amends the Violence in the Family (Prevention and Protection of Victims) Law 1994, § 8(4) (Mar. 1996) (Cyprus).

295. See Telephone Interview with George Stavrinakis (Nov. 4, 1996).

theory, the approach this Article contends provides the most appropriate framework within which to analyze the issue.

### *A. The Formal Equality Approach*

Formal equality advocates argue that women who are similarly situated to men should not be treated differently, and that one of the keys to women's equality is choice. For women to be equal they must be allowed to make choices free of artificial barriers.<sup>296</sup> Women have suffered great harm when treated differently than men and when their choices have been limited.<sup>297</sup> Therefore, although treating women similarly to men creates some problems, these advocates argue that "for all its problems, the equality approach is the better one."<sup>298</sup>

As Chris Littleton explains:

The roots of liberal feminism are the roots of liberal theory. They begin with the Enlightenment and the Western enshrinement of the individual rational man [sic] as the center of the universe. This individual—who is "the person" according to liberal theory—is presocial; individuals' agreements to respect each other's rights creates society. Because the individual conceptually predates society, persons are born, not made. They are endowed ("by their Creator") with the inalienable rights of "life, liberty and the pursuit of happiness."<sup>299</sup>

Littleton explains that the goal of liberal feminism is to uncover women's individuality by expanding women's choices.<sup>300</sup> "In litigation, this paradigm plays itself out through attempts to eliminate legal recognition of sex-based categories; in all legal arenas, it takes the form of comparing isolated aspects of women's lives to 'similar' aspects of men's lives."<sup>301</sup>

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296. See Bartlett, *Gender Law*, *supra* note 7, at 2.

297. See Bartlett, *Gender Law*, *supra* note 7, at 2.

298. Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 14 *WOMEN'S RTS. L. REP.* 151, 170 (1992) (arguing that special treatment model has too many costs).

299. Littleton, *Feminist Jurisprudence*, *supra* note 7, at 757 (alteration in original).

300. See Littleton, *Feminist Jurisprudence*, *supra* note 7, at 759 (noting that, despite her earlier views to the contrary, she now believes that liberalism offers a critique of men's choices as well).

301. Littleton, *Feminist Jurisprudence*, *supra* note 7, at 759 (citations omitted). For a history of the formal equality approach in sex discrimination cases, see KATHARINE T. BARTLETT, *GENDER AND LAW* 89–120 (1993).

Although formal equality advocates still argue their approach to gender issues forcefully and successes based on formal equality still occur,<sup>302</sup> by the 1980s many feminist commentators concluded the theory had outlived its usefulness.<sup>303</sup> In commenting on the limited effectiveness of this approach, Elizabeth Schneider discusses the Supreme Court's handling of pregnancy discrimination as only one of formal equality's limitations.<sup>304</sup> She contends that formal equality had limited success for several reasons. First, because "the public and the courts viewed the equal rights amendment as a litmus test of political support for the women's movement, its defeat affected the movement nationally. . . ."<sup>305</sup> Second, "despite efforts by feminist litigators to formulate women's rights claims as if no differences existed between men and women, the Supreme Court has read in differences."<sup>306</sup> Third, "the Supreme Court has viewed equality claims as distinct from reproductive choice claims."<sup>307</sup>

As a result of these problems, Schneider argues, the results of the movement were limited.<sup>308</sup> Although "rights to reproductive choice have improved, access to those rights for poor women and especially poor women of color has not been adequately protected."<sup>309</sup> Even when there

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302. The Supreme Court, for example, recently held that state sponsored single-sex military schools are unconstitutional. *United States v. Virginia*, 116 S. Ct. 2264 (1996) (ruling that Virginia's sponsorship of an all male military college violated the Equal Protection Clause because it denied those women who are capable of meeting all the standards the military college imposes on men the opportunity to join the college).

303. In 1986, for example, Lucinda Finley stated, "[p]articularly among feminist scholars, it is hardly fashionable anymore to adhere to liberal feminism. Its goals are largely limited to achieving the same rights and privileges for women as those held by men, without seriously questioning the existing values and structures of male-defined institutions." Lucinda M. Finley, *Choice and Freedom: Elusive Issues in the Search for Gender Justice*, 96 YALE L.J. 914, 914 (1987)(book review).

304. See Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589, 635-36 (1986). In *Geduldig v. Aiello*, 417 U.S. 484 (1974), the Court rejected the argument that discrimination based on pregnancy was sex discrimination. *Id.* at 494. For criticism of the Court's decision, see Katharine T. Bartlett, Comment, *Pregnancy and the Constitution: The Uniqueness Trap*, 62 CAL. L. REV. 1532, 1536 (1974); Sylvia A. Law, *Rethinking Sex and the Constitution*, 132 U. PA. L. REV. 955, 983-85 (1984).

305. Schneider, *supra* note 304, at 635.

306. Schneider, *supra* note 304, at 635.

307. Schneider, *supra* note 304, at 635.

308. See Schneider, *supra* note 304, at 630-32.

309. Schneider, *supra* note 304, at 632.

have been "concrete legal gains," the formal equality approach has not necessarily affected women's lives or improved their economic realities.<sup>310</sup>

*B. MacKinnon's Nonsubordination Theory*

Unlike the formal equality view that a woman has the "capacity to exercise meaningful choice in the direction of her own life,"<sup>311</sup> Catharine MacKinnon has "emphasized the systematic character of women's constraint"<sup>312</sup> based on "the sexualized domination of women."<sup>313</sup> In presenting this picture of women's reality, MacKinnon has relied heavily on women's descriptions of their own experiences.

MacKinnon's critique of formal equality focuses both on its methodology and on the substance of its perspective. She argues that the methodology, an adherence to neutral principles that reflect male values and male experience,<sup>314</sup> has not allowed women's experiences to be heard. In addition, the substance has not furthered the goal of ending the oppression of women; indeed, in many instances, it actually reinforces that oppression by accepting the status quo as its starting point.<sup>315</sup>

310. See Schneider, *supra* note 304, at 633.

311. Abrams, *Sex Wars Redux*, *supra* note 9, at 326.

312. Abrams, *Sex Wars Redux*, *supra* note 9, at 326.

313. Kathryn Abrams, *Songs of Innocence and Experience: Dominance Feminism in the University*, 103 YALE L.J. 1533, 1549 n.66 (1994) [hereinafter Abrams, *Songs*] (reviewing KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR AND FEMINISM ON CAMPUS* (1993)).

314. See Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 635 (1983) [hereinafter MacKinnon, *Feminism, Marxism*]. MacKinnon argues that the principles liberal theory presents as neutral are, in reality, not at all neutral. To the contrary, she argues that "male dominance . . . is metaphysically nearly perfect. Its point of view is the standard for point-of-viewlessness, its particularity the meaning of universality." MacKinnon, *Feminism, Marxism, supra*, at 638-39 (footnote omitted).

315. According to MacKinnon, the problem with the difference approach is that it "adopts the point of view of male supremacy on the status of the sexes. Simply by treating the status quo as 'the standard,' it invisibly and uncritically accepts the arrangements under male supremacy." MACKINNON, *Difference and Dominance: On Sex Discrimination*, in FEMINISM UNMODIFIED, *supra* note 10, at 32, 42-43 (1987). In her introduction to *Feminism Unmodified*, she states:

Hear this: the abstract equality of liberalism permits most women little more than does the substantive inequality of conservatism. One genius of the system we live under is that the strategies it requires to survive it from day to day are exactly the opposite of what is required to change it. . . . Until the cost of this is collectively experienced as unacceptable by those

According to MacKinnon, nonsubordination theory addresses both these problems. First, it provides the tools—the method of consciousness raising—to present women’s experiences. Second, it provides a framework within which the problems exposed through consciousness raising can be addressed.

### 1. Consciousness Raising

MacKinnon explains that in the 1960s and 1970s many women’s first experiences with feminism were through participation in a consciousness raising group.<sup>316</sup> In these grassroot groups, which were comprised exclusively of females, women shared their experiences and

[w]oman’s self concept emerged.

. . . .

Realities hidden under layers of valued myth were unmasked simply by talking about what happens every day. . . .

. . . .

[W]omen in consciousness raising groups [shared] radical changes in members’ lives, relationships, work, life goals, and sexuality. This process created bonds and a different kind of

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who have drawn the best of men’s options for women, and glimpsed as changeable by those who have drawn the worst, we will continue to live—if it can be called living—under its aegis.

MACKINNON, *Introduction*, in *FEMINISM UNMODIFIED*, *supra* note 10, at 1, 16–17.

316. See CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 84 (1989) [hereinafter *MACKINNON, FEMINIST THEORY*]. In describing the process of consciousness raising, MacKinnon quotes the experience and conclusion of one woman as reflected by Adrienne Rich:

I was looking desperately for clues, because if there were no clues then I thought I might be insane. I wrote in a notebook about this time: “Paralyzed by the sense that there exists a mesh of relationships—e.g., between my anger at the children, my sensual life, pacifism, sex (I mean sex in its broadest significance, not merely sexual desire)—an interconnectedness which, if I could see it, make it valid, would give me back myself, make it possible to function lucidly and passionately. Yet I grope in and out among these dark webs.” I think I began at this point to feel that politics was not something “out there” but something “in here” and of the essence of my condition.

MACKINNON, *FEMINIST THEORY*, *supra*, at 88 (quoting ADRIENNE RICH, *When We Dead Awaken: Writing as Re-vision*, in *ON LIES, SECRETS, AND SILENCE: SELECTED PROSE*, 1966–1978, at 33, 44 (1979)).

knowledge, collective knowledge built on moving and being moved, on changing and being changed.<sup>317</sup>

According to MacKinnon, consciousness raising revealed that "the personal is the political" because women as a group are dominated by men as a group; women are subordinated in society; gender division "pervades and determines even women's personal feelings in relationships"; and a woman's problems are not individual but belong to "women as a whole" and must be addressed as such.<sup>318</sup> Furthermore, the method revealed "the completeness of the incursion . . . through growing up female in a male-dominated society."<sup>319</sup> Finally, it revealed "the relation of two moments: being shaped in the image of one's oppression, yet struggling against it."<sup>320</sup>

MacKinnon makes clear the fact that consciousness raising is not confined to the kind of groups described above.<sup>321</sup> To the contrary, according to MacKinnon, "[t]he key to feminist theory consists in its way of knowing. Consciousness raising is that way."<sup>322</sup> She quotes Sheila Robotham's explanation that an

oppressed group must at once shatter the self-reflecting world which encircles it and, at the same time, project its own image onto history. In order to discover its own identity as distinct from that of the oppressor, it has to become visible to itself.

317. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 88–91.

318. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 95.

319. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 103.

320. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 102.

321. *See* MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 84.

In her article, *Feminist Legal Methods*, Katharine Bartlett elaborates upon other avenues of consciousness raising. Katherine Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990) [hereinafter Bartlett, *Legal Methods*]. Bartlett quotes Leslie Bender's comment that methods of consciousness raising include "bearing witness to evidences of patriarchy as they occur, through unremitting dialogues with and challenges to the patriarchs, and through the popular media, the arts, politics, lobbying, and even litigation." Bartlett, *Legal Methods*, *supra*, at 864–65 (quoting Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 9–10 (1988)). Bartlett also points out that "[w]omen use consciousness-raising when they publicly share their experiences as victims of marital rape, pornography, sexual harassment on the job, street hassling, and other forms of oppression and exclusion, in order to help change public perceptions about the meaning to women of events widely thought to be harmless or flattering." Bartlett, *Legal Methods*, *supra*, at 865 (citations omitted).

322. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 84.

All revolutionary movements create their own way of seeing.<sup>323</sup>

MacKinnon argues that "[t]hrough consciousness raising, women grasp the collective reality of women's condition from within the perspective of that experience, not from outside it."<sup>324</sup> They are able to see that "male power creates the reality of the world" and "feminist theory will simply capture that reality but expose it as specifically male for the first time."<sup>325</sup>

While there has been great acceptance among feminists of the importance of consciousness raising,<sup>326</sup> many feminists question whether MacKinnon has defined too narrowly the kinds of female experiences that consciousness raising reveals. In her review of *Feminism Unmodified*, for example, Littleton agrees with MacKinnon's basic proposition that "[f]eminist method starts with the very radical act of taking women seriously, believing that what we say about ourselves and our experience is important and valid, even when (or perhaps especially when) it has little or no relationship to what has been or is being said *about* us."<sup>327</sup> Littleton acknowledges the accomplishments that MacKinnon's vision has brought to the law in, for example, the area of sexual harassment.<sup>328</sup>

323. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 84 (quoting SHEILA ROWBOTHAM, *WOMAN'S CONSCIOUSNESS MAN'S WORLD* 27 (1973)).

324. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 121.

325. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 125.

326. Many commentators have expanded on MacKinnon's view of consciousness raising as central to the development of feminist jurisprudence. According to Leslie Bender, for example, consciousness raising is necessary in order to overcome the myth that "the patriarchal description of reality is not biased but neutral . . . . Consciousness raising [is] a fertile component of feminist methodology designed to accomplish the necessary frame-bursting . . . a process of educating and exposing one another to the subtleties and harms of patriarchy." Bender, *supra* note 321, at 9 (1988); *see also* Kathleen A. Lahey, ". . . *Until Women Themselves Have Told All They Have to Tell* . . .", 23 OSGOOD HALL L.J. 519, 532-33 (1985) (stating that "(male) social theorists have yet to understand how feminist processes of consciousness raising might be the type of methodological breakthroughs for which the unified-theory theorists like Roberto Unger are looking" and that "[t]he consciousness raising process thus reveals that so-called objectivity is only one mode of subjectivity, and that it is male privilege that transforms masculinist subjectivity into (universalist) objectivity." (footnote omitted)); Ann E. Freedman, *Feminist Legal Method in Action: Challenging Racism, Sexism and Homophobia in Law School*, 24 GA. L. REV. 849 (1990) (describing the use of consciousness raising in the law school setting). For a citation to and a discussion of other works that address the importance of consciousness raising, see Bartlett, *Legal Methods*, *supra* note 321, at 863 n.139.

327. Littleton, *Feminist Jurisprudence*, *supra* note 7, at 764.

328. As an example, Littleton discusses MacKinnon's work on sexual harassment, in which



However, she also expresses concern that MacKinnon presents women's accounts of their experiences as inseparable from the reality of women's "sexual use and abuse by men."<sup>329</sup> She further questions MacKinnon's assumption that sexual "use" is sexual "abuse."<sup>330</sup> Littleton discusses, for example, the following excerpt from MacKinnon's essay on Playboy magazine in *Feminism Unmodified*:

From a feminist perspective, what exactly does *Playboy* do? It takes a woman and makes her sexuality into something any man who wants to can buy and hold in his hand for three dollars and fifty cents. His access to her sexuality is called freedom—his *and hers* (emphasis added). She becomes something to be used by him, specifically, an object for his sexual use.<sup>331</sup>

Littleton expresses concern that this passage challenges not only the "socially male" view that using women is not abusing women, but also other "feminist perspectives that do not read 'woman's accounts' as primarily 'of sex use and abuse by men.'"<sup>332</sup>

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MacKinnon relied on women's accounts of sexual harassment as demeaning and degrading to develop a new legal approach to sexual harassment that responded to these accounts. See Littleton, *Feminist Jurisprudence*, *supra* note 7, at 766.

329. Littleton, *Feminist Jurisprudence*, *supra* note 7, at 771 (quoting MacKinnon, *Introduction*, in *FEMINISM UNMODIFIED*, *supra* note 10, at 1, 5).

330. See Littleton, *Feminist Jurisprudence*, *supra* note 7, at 771.

331. Littleton, *supra* note 7, at 771 (quoting MacKinnon, *More than Simply a Magazine: Playboy's Money*, in *FEMINISM UNMODIFIED*, *supra* note 10, at 134, 138). MacKinnon continues with this theme in *Toward a Feminist Theory of the State*, in which she states:

Feminist inquiry into these specific issues began with a broad unmasking through consciousness raising of the attitudes that legitimate and hide women's status, the daily practices and ideational envelope that contain woman's body: notions that women desire and provoke rape, that girls' experiences of incest are fantasies, that career women plot and advance by sexual parlays, that prostitutes are lustful, that wifebeating expresses the intensity of love. Beneath each idea were revealed bare coercion and broad connections to women's social definition as a sex.

MacKinnon, *FEMINIST THEORY*, *supra* note 316, at 109.

332. Littleton, *Feminist Jurisprudence*, *supra* note 7, at 772. Littleton argues that MacKinnon's view of women's experience is much too narrow in that, among other things, it "is strikingly devoid of any systematic analysis of reproduction, motherhood, childrearing, or other similar issues." Littleton, *supra* note 7, at 762 n.54; see also Stephanie M. Wildman, *The Power of Women*, 2 YALE J.L. & FEMINISM 435, 449-52 (1990) (book review) (criticizing MacKinnon for not focusing more on

Although feminists differ regarding the nature of women's reality revealed by consciousness raising, most agree that consciousness raising is a major feminist tool. Bartlett, for example, suggests that consciousness raising is a "meta-method" because it enables "feminists to draw insights and perceptions from their own experiences and those of other women and to use these insights to challenge dominant versions of social reality."<sup>333</sup> In addition, she suggests that the questions that consciousness raising has provoked have gone beyond methodology to the concept of the nature of knowledge.<sup>334</sup> She defines MacKinnon's approach as feminist standpoint epistemology—of identifying woman as a victim and claiming that this status gives women "access to understanding about oppression that others cannot have."<sup>335</sup> While discussing some problems with this approach,<sup>336</sup> she acknowledges that it "has contributed a great deal to feminist understandings of the importance of our respective positioning within society to the 'knowledge' we have."<sup>337</sup> Thus, while not all feminists agree with MacKinnon that "[c]onsciousness raising is the major technique . . . of the women's movement,"<sup>338</sup> there is strong agreement about its methodological significance.

## 2. MacKinnon's Criticism of Formal Equality

MacKinnon's work, *Feminism Unmodified*, has three major themes: "the analysis that the social relation between the sexes is organized so that men may dominate and women must submit and this relation is sexual . . . ; a critique of the notion that gender is basically a difference rather than a hierarchy; [and the view that] . . . pornography . . . [i]s a key means of actualizing these two dynamics in life."<sup>339</sup>

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women's experience with children). For a more extended discussion on the broader vision of women's lives other feminists are suggesting, see *infra* Part II.C. of this section.

333. Bartlett, *Legal Methods*, *supra* note 321, at 866.

334. See Bartlett, *Legal Methods*, *supra* note 321, at 867.

335. Bartlett, *Legal Methods*, *supra* note 321, at 872.

336. Bartlett argues that MacKinnon's approach is too broad because it speaks for all women, and too narrow because being a victim is not the only experience that "gives special access to truth." Bartlett, *Legal Methods*, *supra* note 321, at 875.

337. Bartlett, *Legal Methods*, *supra* note 321, at 873.

338. Bartlett, *Legal Methods*, *supra* note 321, at 863 n.139 (quoting MacKinnon, *Feminism, Marxism*, *supra* note 314, at 519). Bartlett, for example, also discusses the methods of "asking the woman question" and "feminist practical reasoning." Bartlett, *Legal Methods*, *supra* note 321, at 829.

339. MacKinnon, *Introduction*, in *FEMINISM UNMODIFIED*, *supra* note 10, at 1, 3.

As Frances Olsen states in her review of *Feminism Unmodified*, "[t]he most striking aspect of MacKinnon's work is its ambition. She is looking for answers to what she sees as the big question of women's subordination: what are its roots, what damage does it do, how does it manage to be so tenacious, how is it enforced, and what capacity does it have to change?"<sup>340</sup> Olsen notes that the first theme MacKinnon identifies in her introduction to *Feminism Unmodified*, that of the sexual nature of inequality, has two parts: "that men, and perhaps women, 'sexualize inequality, especially the inequality of the sexes,'"<sup>341</sup> and "that the relationship of domination and submission is sex, period."<sup>342</sup>

Olsen finds the first proposition—that men and women sexualize inequality—unquestionably true. She points out that "[t]he sexually attractive woman tends to be helpless or at least subordinate; the sexually attractive man tends to be strong and dominant."<sup>343</sup> Olsen finds the second proposition—that the "relationship of domination and submission is sex"—more controversial because it is reductionist if taken on a personal level rather than on the structural level intended.<sup>344</sup> According to Olsen, "MacKinnon's main point is that the domination of women by men has been made erotic and that this eroticization of domination has important practical and political ramifications. . . . Whether there is more to sex than simply domination and subordination is a mere distraction from the main point. . . ."<sup>345</sup>

MacKinnon's second theme—that gender is about hierarchy rather than difference—suggests that the liberal definition of sex inequality does

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340. Olsen, *supra* note 8, at 1166 (citation omitted).

341. Olsen, *supra* note 8, at 1155 (quoting MACKINNON, *Introduction, in FEMINISM UNMODIFIED*, *supra* note 10, at 3). This is one of the most controversial aspects of MacKinnon's theory—that "the peculiar durability of male supremacy as a system of hegemony as well as its imperviousness to change once it exists" is the result of the inequality of the sexes being socially defined as the enjoyment of sexuality itself, thereby giving women "a stake in [their] own subordination." MACKINNON, *Introduction, in FEMINISM UNMODIFIED*, *supra* note 10, at 1, 7.

342. Olsen, *supra* note 8, at 1155.

343. Olsen, *supra* note 8, at 1155. Olsen points out that changes in the last two generations may have produced an image of a sexually desirable woman who is independent and powerful and an attractive man who is vulnerable and sensitive. She claims that such "inversions" do not change the "basic insight," however, and suggests that the sexual appeal of strong women may be related to men's desire to make such women seem dependent. Olsen, *supra* note 8, at 1155.

344. Olsen, *supra* note 8, at 1155.

345. Olsen, *supra* note 8, at 1159–60.

not work because it uses a male standard as a norm,<sup>346</sup> which few women can meet.<sup>347</sup> MacKinnon argues that the alternative route offered by liberal theory acknowledging women's differences from men "is the velvet glove on the iron fist of domination."<sup>348</sup> She argues that this route fails because it still uses the male as the norm and women "are measured according to our lack of correspondence with him, our womanhood judged by our distance from his measure."<sup>349</sup> To MacKinnon, liberalism is not feminism because feminism, in addition to seeking access for women in the male world, also criticizes male pursuits from a woman's point of view and "seeks to empower women on [their] own terms."<sup>350</sup>

MacKinnon argues that true feminism views equality as "a question of the distribution of power," the goal being "to expose that which women have had little choice but to be confined to, in order to change

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346. See MACKINNON, *Difference and Dominance*, in FEMINISM UNMODIFIED, *supra* note 10, at 32, 33.

347. According to MacKinnon:

The women that gender neutrality benefits, and there are some, show the suppositions of this approach in highest relief. They are mostly women who have been able to construct a biography that somewhat approximates the male norm, at least on paper. They are the qualified, the least of sex discrimination's victims. When they are denied a man's chance, it looks the most like sex bias. The more unequal society gets, the fewer such women are permitted to exist.

MACKINNON, *Difference and Dominance*, in FEMINISM UNMODIFIED, *supra* note 10, at 32, 37.

348. MACKINNON, *Introduction*, in FEMINISM UNMODIFIED, *supra* note 10, at 1, 8.

349. MACKINNON, *Difference and Dominance*, in FEMINISM UNMODIFIED, *supra* note 10, at 32, 34. MacKinnon compares the situation to the anatomy models used in medical school: "A male body is the human body; all those extra things women have are studied in ob/gyn. It truly is a situation in which more is less." MACKINNON, *Difference and Dominance*, in FEMINISM UNMODIFIED, *supra* note 10, at 32, 34.

Other feminist scholars, who agree with MacKinnon that presumably neutral institutions do not adequately reflect women's experiences and concerns, do not reach the same conclusions as MacKinnon. Martha Fineman, for example, argues for the idea of a "gendered life"—the notion that "most differences between the sexes are socially manufactured, not inherent." Martha Albertson Fineman, *Feminist Theory in Law: The Difference It Makes*, 2 COLUM. J. GENDER & L. 1, 2 (1992). According to Fineman, "[i]n a world in which gender is more than semantics, feminist legal theory cannot be gender-neutral. . . . Feminist theory must be woman-centered, gendered by its very nature because it takes as its raw building material women's experiences." Fineman, *supra*, at 15 (citing Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 SIGNS 515, 530-41 (1982)).

350. MACKINNON, *Not by Law Alone*, in FEMINISM UNMODIFIED, *supra* note 10, at 21, 22.

it."<sup>351</sup> It focuses on the experiences of women that "have been silenced out of the difference definition of sex equality largely because they happen almost exclusively to women" and are, therefore, "considered *not* to raise sex equality issues."<sup>352</sup> MacKinnon includes in this category issues of violence against women: "women's material desperation, . . . rape and attempted rape[,] . . . sexual assault of children[,] . . . battery of women[,] . . . prostitution, . . . and pornography. . . ."<sup>353</sup>

Thus, for MacKinnon, men's sexual domination of women has made women sexual victims through rape, battery, pornography, and prostitution, all of which are interrelated.<sup>354</sup> Furthermore, she argues that this sexual violence against women impacts directly or indirectly upon all women, and that the liberal theory of law does not adequately address these injuries.<sup>355</sup> In her closing chapter of *Toward a Feminist Theory of the State*, MacKinnon suggests that a feminist theory of the state would require a new relation between life and law.<sup>356</sup> She argues that what women need most is "[e]quality understood substantively rather than abstractly, defined on women's own terms and in terms of women's

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351. MACKINNON, *Difference and Dominance*, in FEMINISM UNMODIFIED, *supra* note 10, at 32, 40.

352. MACKINNON, *Difference and Dominance*, in FEMINISM UNMODIFIED, *supra* note 10, at 32, 41. MacKinnon elaborates upon this theme in *Reflections on Sex Equality Under Law*. She explains that:

Because the "similarly situated" requirement continues to control access to equality claims, the laws of sexual assault and reproductive control—areas as crucial in the social construction of women's inferior status as they are laden with misogyny—have not been seen as amenable to constitutional sex equality attack. Comparatively few men are raped and no men are denied abortions; gender comparisons are therefore unavailable or strained. So sexuality and procreation become happy differences or unhappy differences but never imposed inequalities.

The inequality of women to men deserves a theory of its own. The status of women resembles other bases for inequality, but, like every inequality, is also particular and unique.

Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281, 1297–98 (1991).

353. MACKINNON, *Difference and Dominance*, in FEMINISM UNMODIFIED, *supra* note 10, at 32, 41. One commentator has expressed the concern that MacKinnon's dominance approach "would leave men largely unprotected against just such discrimination." Gregory Bassham, *Feminist Legal Theory: A Liberal Response*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 293, 301 (1992).

354. See MACKINNON, *Introduction*, in FEMINISM UNMODIFIED, *supra* note 10, at 1, 5.

355. See MACKINNON, *Introduction*, in FEMINISM UNMODIFIED, *supra* note 10, at 1, 16.

356. See MACKINNON, FEMINIST THEORY, *supra* note 316, at 237–49.

concrete experience . . . ."<sup>357</sup> First, women's concrete reality must be recognized.<sup>358</sup> Then, we must "recognize that male forms of power over women are affirmatively embodied as individual rights in law."<sup>359</sup> Consequently, laws must be changed if women are to have equality.

To the extent feminist law embodies women's point of view, it will be said that its law is not neutral. But existing law is not neutral. It will be said that it undermines the legitimacy of the legal system. But the legitimacy of existing law is based on force at women's expense. Women have never consented to its rule—suggesting that the system's legitimacy needs repair that women are in a position to provide. It will be said that feminist law is special pleading for a particular group and one cannot start that or where will it end. But existing law is already special pleading for a particular group, where it has ended. The question is not where it will stop, but whether it will start for any group but the dominant one.<sup>360</sup>

In sum, MacKinnon argues that formal equality does not adequately address the fact that women are subordinate to men in our society and that women's subordination is sexualized. She contends that nonsubordination theory, which focuses on the sexualized subordination of women, provides a better framework in which to address the needs of women and to develop appropriate legal responses to those needs.

### *C. Nonsubordination Theory Modified by Partial Agency*

Although agreeing with the importance that MacKinnon places on listening to women's voices, other nonsubordination theorists have found MacKinnon's picture incomplete. They have suggested that women possess "a constrained but nonetheless salient capacity for self-direction."<sup>361</sup> Kathryn Abrams describes two types of critiques of MacKinnon's work: those of non-academic women who allege that the focus of dominance theorists on male sexual aggression denies the sexual

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357. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 244.

358. *See* MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 244.

359. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 244.

360. MACKINNON, *FEMINIST THEORY*, *supra* note 316, at 249.

361. Abrams, *Sex Wars Redux*, *supra* note 9, at 355.

satisfaction that they experience in their lives;<sup>362</sup> and those of academics, who also view traditional nonsubordination theory as undervaluing women's agency but who are more able to view agency as coexisting with systematic gender oppression.<sup>363</sup>

In her review of Katie Roiphe's book *The Morning After: Sex, Fear and Feminism on Campus*, Abrams analyzes the critique of a non-academic commentator.<sup>364</sup> She describes Roiphe's book as "impressionistic portraits of college life" which describe "the cloud of sexual fear that has settled over many American campuses."<sup>365</sup> Abrams describes Roiphe's argument that in campus "date rape and safe sex workshops students . . . learn how to acquiesce in politically prescribed views of the world."<sup>366</sup> Roiphe "look[s] for signs of frustration, rebellion, dissent, . . . but there are only heads nodding in consensus."<sup>367</sup> The "'hard, bright, hedonistic light' of sexual freedom . . . has been replaced by the 'blue light' of campus safety."<sup>368</sup> Abrams then discusses Roiphe's chapters on date rape, in which Roiphe "sees familiar images of fragility and asexuality in the

362. See Abrams, *Sex Wars Redux*, *supra* note 9, at 329–30. As examples of these critiques, Abrams cites the work of CAMILLE PAGLIA, *SEX ART AND AMERICAN CULTURE* (1992); KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR, AND FEMINISM ON CAMPUS* (1993); and NAOMI WOLF, *FIRE WITH FIRE: THE NEW FEMALE POWER AND HOW IT WILL CHANGE THE 21ST CENTURY* (1993). See Abrams, *Sex Wars Redux*, *supra* note 9, at 331 n.97.

363. See Abrams, *Sex Wars Redux*, *supra* note 9, at 332–33. Abrams describes several types of academic critiques. First, she describes the critique of Black feminists such as Angela Harris, who criticizes MacKinnon for "the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience." Abrams, *Sex Wars Redux*, *supra* note 9, at 336 n.119 (quoting Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990)). Second, Abrams discusses the idea that women are not victims because they have the power to interpret their experiences as they wish. She points out, for example, that women can interpret pornography in different ways, not all of them harmful to women. See Abrams, *Sex Wars Redux*, *supra* note 9, at 337–40 (discussing Susan Etta Keller, *Viewing and Doing: Complicating Pornography's Meaning*, 81 GEO. L.J. 2195 (1993)). Finally, Abrams discusses the "agency critique," which accepts the central principles of dominance theory but emphasizes the need to incorporate more agency into the theory. Abrams places herself in the group of proponents of this theory. See Abrams, *Sex Wars Redux*, *supra* note 9, at 343–53.

364. Abrams, *Songs*, *supra* note 313.

365. Abrams, *Songs*, *supra* note 313, at 1535.

366. Abrams, *Songs*, *supra* note 313, at 1536.

367. Abrams, *Songs*, *supra* note 313, at 1536 (quoting ROIPHE, *supra* note 362, at 23).

368. Abrams, *Songs*, *supra* note 313, at 1536 (quoting ROIPHE, *supra* note 362, at 27–28).

portraits of guileless, bamboozled women.”<sup>369</sup> She quotes Roiphe: “The assumption embedded in the movement against date rape is . . . [that] men want sex, women don’t . . . In emphasizing the [sic] struggle—he pushing, she resisting—the rape-crisis movement recycles and promotes an old model of sexuality.”<sup>370</sup> Abrams summarizes Roiphe’s suggestion for “a generalized prescription for individual action: take responsibility for your own situation, resist a man when you want to resist, and take up that ‘hard, bright, hedonistic light’ of sexual expression when you prefer.”<sup>371</sup>

Abrams’ main critique of Roiphe is that her analysis is simplistic and unrealistic. She suggests that Roiphe helps women “negotiate the terrain of their daily lives”<sup>372</sup> by responding to a need unaddressed by many dominance theorists. She contends that because “[d]ominance feminists’ educational efforts have aimed primarily to produce the social understanding that justifies the resort to law . . . only intermittent attention has been given to” daily matters.<sup>373</sup> The main lesson that she draws from Roiphe’s book is that “dominance feminists should be more concerned with the way that their message applies to the practical challenges of women’s lives.”<sup>374</sup>

Lucinda Finley’s thoughtful review of *Feminism Unmodified* is an example of the second kind of critique, the academic critique.<sup>375</sup> Finley accepts many of MacKinnon’s assertions. For example, she states:

Much of MacKinnon’s analysis of the fine, often indistinguishable line between what is socially accepted as normal, “healthy” sex and what is harmful to women—or deaf to their needs and wishes—resonates with my personal experience and with that of numerous women I know well enough to talk about these things with. And so I find her analysis of the interaction between male power and the construction of sex,

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369. Abrams, *Songs*, *supra* note 313, at 1537.

370. Abrams, *Songs*, *supra* note 313, at 1537 (quoting ROIPHE, *supra* note 362, at 63) (first alteration in original).

371. Abrams, *Songs*, *supra* note 313, at 1538 (citing ROIPHE, *supra* note 362, at 68–69, 101–02).

372. Abrams, *Songs*, *supra* note 313, at 1557.

373. Abrams, *Songs*, *supra* note 313, at 1557.

374. Abrams, *Songs*, *supra* note 313, at 1557.

375. Lucinda M. Finley, *The Nature of Domination and the Nature of Women: Reflections on Feminism Unmodified*, 82 Nw. U. L. Rev. 352 (1988) (book review) [hereinafter, Finley, *Nature*].



and the constriction of options for women and harm to women through sex—and thus the connection between sexuality and the social subordination of women—powerful and convincing in significant respects.<sup>376</sup>

Finley does, however, express concern about MacKinnon's presentation of all women as victimized in sex because of the current power distribution in society.<sup>377</sup> She distinguishes this concern from the common criticism that MacKinnon reinforces the stereotype of women as victims by describing them as such.<sup>378</sup> Instead, Finley's concern is that "[i]t is a big leap from pointing out the ways in which women are the victims of sexual violence to implying that women are victims in all sexual relations. . . ."<sup>379</sup> To demonstrate the invalidity of this assumption, Finley discusses her own sexual development, stating that MacKinnon's picture of "sex as constructed solely around the man" matched her experience as a young woman.<sup>380</sup> She adds, however, that she and other women she knows have matured, becoming more aware of their own sexual needs. She states, "Sometimes we can affirmatively want only to please another; sometimes a woman can selfishly want and take only pleasure for herself; other times sex can involve mutual pleasurable interaction, an important form of sharing that doesn't feel at all like domination and involves no pain."<sup>381</sup>

376. Finley, *Nature*, *supra* note 375, at 360. Finley also acknowledges her initial resistance to dominance theory because "it seems to sweep so far against the grain of the liberal values that are deeply imbedded in people like me, who are educated and given access to opportunities according to male-defined values and standards in America." Finley, *Nature*, *supra* note 375, at 360.

377. See Finley, *Nature*, *supra* note 375, at 378 (discussing MacKinnon's view that "[l]ooking at the facts of the abuses of women all at once, you see that a woman is socially defined as a person who, whether or not she is or has been, can be treated in these ways by men at any time, and little, if anything, will be done about it." (quoting MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in *FEMINISM UNMODIFIED*, *supra* note 10, at 163, 170)).

378. See Finley, *Nature*, *supra* note 375, at 378. For an example of the more common type of criticism, see Jeanne L. Schroeder, *Taming of the Shrew: The Liberal Attempt to Mainstream Radical Feminist Theory*, 5 *YALE J.L. & FEMINISM* 123, 179–80 (1992) ("Without a positive conception of the feminine, MacKinnon's unmodified feminism degenerates into total annihilation . . . . [W]hile MacKinnon starts as one of the most powerful prophetesses of the cycle of the oppression of women, she is ultimately unable to break out of the cycle. She has defined away her own feminine voice as silence.").

379. Finley, *Nature*, *supra* note 375, at 379.

380. Finley, *Nature*, *supra* note 375, at 381.

381. Finley, *Nature*, *supra* note 375, at 381.

Finley finds support for this point in the work of Robin West:

[A]s Robin West revealed . . . women's sexual lives and routes to sexual fulfillment are complex—often depending on complicated, multidimensional relationships with others in which the desire to be taken care of may blend with the desire to be dominated; in which the desire for absolute trust may blend in to finding pleasure in rendering one self up to another's capacity to give pain; in which women may want to lose themselves in another person.<sup>382</sup>

West criticizes both liberal and radical feminists for not taking women's experiences sufficiently into account. She argues that liberal feminists refuse to see that women consent to their own misery because to acknowledge this aspect of women's experience would undermine the liberal assumption that "people consent to their circumstances so as to bring about their own happiness."<sup>383</sup> She argues further that radical feminists refuse to address women's accounts of finding erotic pleasure in submission because to do so would undermine their political ideals.<sup>384</sup> According to West, sexual submission has erotic appeal and value when it is an expression of trust and not an expression of fear. While "[t]rust is enlivening, and fear is deadening . . . [i]t is a subjective, internal, hedonic difference. It is the difference between the battered woman's consensual endurance—motivated by fear—of beatings, and the lover's consensual enjoyment—motivated by trust—of controlled submission."<sup>385</sup>

In addition to arguing that traditional nonsubordination theory does not recognize women's positive experiences, recent theorists have argued that traditional nonsubordination theory is also lacking because it does not account for women who are able to rise above their victimization.<sup>386</sup> Abrams, for example, notes that in MacKinnon's essay, *Linda's Life and Andrea's Work*, she states that "we cannot explain the fact' that Linda

382. Finley, *Nature*, *supra* note 375, at 380 (citing Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 Wis. Women's L.J. 81 (1987)) [hereinafter West, *Hedonic Lives*].

383. West, *Hedonic Lives*, *supra* note 382, at 93.

384. See West, *Hedonic Lives*, *supra* note 382, at 116–17.

385. West, *Hedonic Lives*, *supra* note 382, at 132.

386. See, e.g., Abrams, *Sex Wars Redux*, *supra* note 9, at 329 (noting how MacKinnon's "reluctance" to view women as having a degree of agency, "led some feminists to believe that she viewed women's agency under oppression as insufficiently important to defend.").

Marchiano and Andrea Dworkin continue to speak and to write given the pervasive subordination they have encountered."<sup>387</sup> She acknowledges that, for the purpose of "preserv[ing] the power of MacKinnon's critique,"<sup>388</sup> MacKinnon may have chosen not to focus on women who were able to extricate themselves from their oppression.<sup>389</sup> Abrams argues, however, this strategy has "led some feminists to believe that she [MacKinnon] viewed women's agency under oppression as insufficiently important to defend."<sup>390</sup> Moreover, Abrams discusses three arguments against such a strategy: it is "off-putting to many women;"<sup>391</sup> it "may give unintended succor to efforts to restrict women's choices;"<sup>392</sup> and it creates obstructions to "remedial analyses which require decisionmakers to identify the range of factors that influence women's choices."<sup>393</sup>

The different perceptions of women presented in MacKinnon's theory and that of more recent nonsubordination theorists have resulted in different approaches to legal change. According to Abrams, although MacKinnon has been involved in creating legal change in areas such as sexual harassment and pornography,<sup>394</sup> MacKinnon

has become well-known for her policy of promulgating no remedial strategy before its time. She resists invitations to speculate on the "endstate" toward which feminist theory is

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387. Abrams, *Sex Wars Redux*, *supra* note 9, at 328 n.84 (citing MACKINNON, *Linda's Life and Andrea's Work*, in FEMINISM UNMODIFIED, *supra* note 10, at 127, 131). In the Introduction to *Feminism Unmodified*, MacKinnon summarizes Marchiano's experience:

Linda Marchiano was coerced by abduction, systematic beatings, surveillance, and torture into the persona of "Linda Lovelace," the centerpiece of the pornographic film *Deep Throat*. During her two and a half years of captivity, she was never out of the sight of the pimp Charles Traynor. When she tried to leave, he threatened her life and the lives of her family. He guarded her with weapons. She had to ask his permission to go to the bathroom, where he watched her through a hole in the wall. He prostituted her; johns who beat her got her for free. He slept on top of her at night. He listened to her telephone calls on an extension.

MACKINNON, *Introduction*, in FEMINISM UNMODIFIED, *supra* note 10, at 1, 10.

388. Abrams, *Sex Wars Redux*, *supra* note 9, at 329.

389. See Abrams, *Sex Wars Redux*, *supra* note 9, at 329.

390. Abrams, *Sex Wars Redux*, *supra* note 9, at 329.

391. Kathryn Abrams, *Ideology and Women's Choices*, 24 GA. L. REV. 761, 777 (1990) [hereinafter Abrams, *Ideology*].

392. Abrams, *Ideology*, *supra* note 391, at 785.

393. Abrams, *Ideology*, *supra* note 391, at 777.

394. See Abrams, *Ideology*, *supra* note 391, at 777 n.47.

intended to produce and argues that focusing prematurely on remedy is not only unproductive but also may distort emerging understandings of the problem.<sup>395</sup>

Theorists such as Abrams, on the other hand, focus on legal change. In *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*,<sup>396</sup> for example, Abrams discusses five strategies that could be used in shaping the law that would reflect the agency critique: using legal regulation to give women an opportunity to explore practices that have contributed to their subordination;<sup>397</sup> abolishing rules that undermine or obscure instances of women's resistance to subordination;<sup>398</sup> evaluating appropriateness of legal intervention to implement the agency critique;<sup>399</sup> reducing the dichotomous characterization of subjectivity in gender related areas;<sup>400</sup> and, investigating alternative accounts of subjectivity to redirect legal assumptions.<sup>401</sup>

When discussing the second approach—abolishing rules that undermine or obscure instances of women's resistance to subordination—Abrams focuses specifically on the issue of battered women who are uncertain about whether they wish to leave their batterer. She rejects the notion that the inconsistency of battered women's actions is necessar-

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395. Abrams, *Ideology*, *supra* note 391, at 777 n.47 (citing MACKINNON, *Afterword*, in *FEMINISM UNMODIFIED*, *supra* note 10, at 215, 219).

396. Abrams, *Sex Wars Redux*, *supra* note 9.

397. See Abrams, *Sex Wars Redux*, *supra* note 9, at 356–58 (pointing out that commentators such as Susan Keller, although supportive of this approach, are concerned about the danger of reinforcing dominant norms and argue that precautions should be taken).

398. See Abrams, *Sex Wars Redux*, *supra* note 9, at 361 (attributing this strategy to the work of Martha Mahoney).

399. See Abrams, *Sex Wars Redux*, *supra* note 9, at 372–73 (acknowledging that others espousing agency critique might believe that women's agency is best served by limiting legal intervention, but argues for the importance of legal intervention as a tool in combatting women's oppression).

400. See Abrams, *Sex Wars Redux*, *supra* note 9, at 374–75 (citing Jane E. Larson, "Imagine her Satisfaction": *The Transformative Task of Feminist Tort Work*, 33 *WASHBURN L.J.* 56 (1993) (arguing that common law claims can be used to expand legal protections for women)).

401. See Abrams, *Sex Wars Redux*, *supra* note 9, at 376. Abrams discusses her analysis of ways that Title VII might be modified to accommodate a subject with multiple or seemingly contradictory characteristics. Abrams, *Sex Wars Redux*, *supra* note 9, at 376 n.274 (citing Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 *MICH. L. REV.* 2479 (1994)). She suggests that a similar approach might be taken "to subjects who combine agency and constraint." Abrams, *Sex Wars Redux*, *supra* note 9, at 376 n.274.

ily "a form of impaired judgment induced by her circumstances."<sup>402</sup> Instead she suggests that, in some instances, a woman's

withdrawal of a complaint may represent a respectable exercise of a woman's agency: either because it is part of a pattern . . . that represents the best a particular woman can do at asserting herself under her circumstances, or because it reflects a contextually reasonable effort to strengthen a relationship or provide security for one's children.<sup>403</sup>

Abrams cites, for example, the work of Christine Littleton, who argues that women who stay in battering relationships with battering men may be expressing a desire for connection, and that "the key to accessing the legal system on their behalf lies in taking seriously *both* the connection they seek *and* the danger they face in that quest."<sup>404</sup>

#### PART IV. ANALYSIS

Although the Cypriot Violence in the Family Law is perceived as a big step forward,<sup>405</sup> many of those familiar with the law agree that the

402. Abrams, *Sex Wars Redux*, *supra* note 9, at 367 n.246.

403. Abrams, *Sex Wars Redux*, *supra* note 9, at 368 n.246.

404. Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 52. Littleton proposes four means of achieving "safe connections": changing the batterer—making it safe for women to remain in their relationships by requiring that batterers complete therapy programs; decreasing the cost of rupture to the woman; increasing the costs of battering to the batterer; and changing the law's preference of heterosexual relationships. Littleton, *supra*, at 52–56.

Although it is beyond the scope of this paper, many feminists have stressed the importance to women of these connections. See, for example, Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 14 (1988) which describes "the connection thesis":

Women are actually or potentially materially connected to other human life. Men aren't. This material fact has existential consequences. While it may be true *for men* that the individual is "epistemologically and morally prior to the collectivity," it is not true for women. The potential for material connection with the other defines women's subjective, phenomenonological and existential state, just as surely as the inevitability of material separation from the other defines men's existential state.

Although some of this work does not directly address the experience of battered women, it provides further support for the argument that the desire of battered women to remain with their abusers is not necessarily based solely on learned helplessness.

405. The passage of the law was cited as an important legal and political gain in the Report of International Women's Rights Action Watch (IWRWW) to the Committee

Act is not working. Part of the problem is budgetary. Other problems have to do with clarifying ambiguities in the Act and providing proper training to those who must implement it.<sup>406</sup> A more fundamental question, however, is whether the Act is not working in part because the compulsory witness provision was excluded.

This section first applies formal equality and nonsubordination theory to the Cypriot experience to determine which has more value in suggesting an appropriate response to the problem. I argue that nonsubordination theory, modified by partial agency theory, provides the most appropriate framework in which to consider the issue. I then show that this analysis is equally applicable to the American approach to whether victims of domestic violence should be required to testify against their abusers.

### *A. Applying Feminist Theory to the Greek Cypriot Experience*

#### 1. The Formal Equality Approach

During a recent three month period, two women in the Republic of Cyprus were allegedly murdered by their husbands, one stabbed twenty-five times<sup>407</sup> and the other thrown from a second floor balcony.<sup>408</sup> It is unclear whether these women suffered from a history of abuse.<sup>409</sup> But, if they had suffered from continual abuse, the likelihood that they could have extricated themselves from an abusive relationship was small. There was no battered woman's shelter to which they could have turned for safety. If they had children, they most likely carried the bulk of the responsibility for them.<sup>410</sup> If they worked outside the home, they most

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on the Elimination of Discrimination Against Women (CEDAW). SHARON LADIN, INT'L WOMEN'S RIGHTS ACTION WATCH, IWRAW TO CEDAW: COUNTRY REPORTS ON CUBA, CYPRUS, ETHIOPIA, HUNGARY, ICELAND, PARAGUAY, PHILIPPINES, UKRAINE, RWANDA 5 (Oct. 1995). The law is also described in great detail in the NAT'L REPORT, *supra* note 147, at 19-21.

406. These problems were all discussed at the meeting I had with Law Commissioner George Stavrinakis at his office. See Interview with George Stavrinakis, *supra* note 252.

407. See *Syrian Wanted for Knife Attack in North?*, *supra* note 262, at 8.

408. See Charalambous, *supra* note 263, at 2.

409. Neither woman had gone to the Center for Domestic Violence for help. See Interview with Alikei Hadjigeorgiou, *supra* note 226.

410. See discussion of Cypriot women's role in the family *supra* Part II.A.2.

likely encountered discrimination in the workforce.<sup>411</sup> If they went to the Church or to their extended families for help, they likely would have been told to reconcile with their husbands.<sup>412</sup> If they called the Center for help, they might have reached a volunteer who also encouraged them to reconcile with their husbands.<sup>413</sup>

Thus, the Greek Cypriot experience demonstrates the weakness of using a formal equality approach—not requiring women to testify—to answer the question of whether abused women should be required to testify against their abusers. Viewing Greek Cypriot women who are victims of domestic violence as free decisionmakers has little connection to their reality. Granted, Greek Cypriot women may now be allowed to enter the center of town and sit down at the table for dinner with their husbands,<sup>414</sup> but if they wish to leave an abusive husband, they frequently must still do so without any external resources to help them<sup>415</sup> and with many obstacles placed in their way. Therefore, by not taking into account the actual experiences of Greek Cypriot women and focusing abstractly on a woman's right to make her own decisions, the formal equality approach to whether a woman should be required to testify against her abuser “mask[s] the exploitation and battering of family members” rather than protects the legitimate privacy interests of women.<sup>416</sup>

## 2. The Nonsubordination Approach

The original provision in the Republic of Cyprus' Violence in the Family bill which required that women testify against their abusers was equivalent to an application of nonsubordination theory. Those who supported that provision believed that abused women need to know that the State is behind them and that their abusers need to know that

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411. See discussion of discrimination in the Greek Cypriot workforce *supra* Part II.A.3.

412. Members of the extended family in Cyprus often support the abusive husband. See Interview with Katia Constantinou and Stavria Thalassi, *supra* note 118. For a discussion of the attitudes of the Church, see also *supra* Part II.A.1.

413. See Interview with Myria Vassiliadou, *supra* note 251.

414. For a discussion of the Cypriot woman's role in the traditional and the transitional family, see *supra* Part II.A.2.

415. Even if they wish to go to the Center for help, its only office is in Nicosia—a major impediment for many women living in other parts of Cyprus. See Interview with Stavria Thalassi, *supra* note 118.

416. Ruth Gavison, *Feminism and the Public Private Distinction*, 45 STAN. L. REV. 1, 24 (1992).

intimidating their wives will not deter the State from prosecuting abusers. The underlying message of their approach was that it was necessary for the State to actively protect Greek Cypriot victims of domestic violence, whether or not they wanted this protection, because they were not in a position to protect themselves.

At first glance, this approach seems appropriate to the situation in Cyprus given MacKinnon's focus on women's sexuality as the heart of female oppression. Although Cypriot women have made many gains in the workplace and in education,<sup>417</sup> those organizations that are striving to achieve equality in the family are encountering the most resistance.<sup>418</sup> Indeed, the Church's resistance to treating women equally is overtly based on its negative views of women's sexuality, and the Church continues to have an enormous impact on Cypriot society.<sup>419</sup> Therefore, because the view that victims of domestic violence are thoroughly constrained in their decisionmaking by a male-dominated society is particularly appropriate to Cypriot society, requiring women to testify against their abusers would seem beneficial.

Such a rule, however, is predicated on only one vision of a Greek Cypriot domestic violence victim's reality—that of the abused woman as a helpless victim. It fails to take into account the fact that in the Republic of Cyprus the experiences and needs of all battered women are not the same. Greek Cypriots who work with victims of domestic violence have found that a blanket provision requiring women to testify against their abusers does not address the large variety of situations they have encountered in which domestic violence played a part.<sup>420</sup> Indeed, some women in the Republic of Cyprus are asserting their will to be free of their abusive husbands.<sup>421</sup> And when they reach out for help, the likelihood that they will receive support in their bid for freedom has improved over the likelihood of that happening years ago.<sup>422</sup> Therefore, the proposed compulsory witness provision that was initially a part of the

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417. See *supra* Parts II.A.3.–4.

418. See *supra* notes 244–54 and accompanying text.

419. See *supra* Part II.A.1.

420. See Interview with Despo Hagiloizou, Director of Family Planning Association, in Nicosia, Cyprus (Feb. 8, 1996).

421. See Interview with Katia Constantiou and Stavria Thalassi, *supra* note 118 (noting that although many victims of domestic violence frequently withdraw charges against their husbands, some do not).

422. The Center has been in existence for almost twenty years and handles a great number of inquiries. See *supra* notes 249–53 and accompanying text.



Violence in the Family Law does not provide sufficient flexibility to address the varied experiences of Greek Cypriot women who are victims of domestic violence.

### 3. Nonsubordination Theory Modified by Partial Agency

As mentioned in Part II.C. of this Article,<sup>423</sup> George Stavrinakis, the Law Commissioner of the Republic of Cyprus, is now considering proposing an amendment to the Violence in the Family Law which among other things, proposes to leave to the discretion of the court, based on certain criteria, the question of whether a woman should be required to testify against her abuser.<sup>424</sup> This approach reflects the reality that battered women in the Republic of Cyprus often need the help of the State to extricate themselves from their husbands' abuse and, at the same time, acknowledges the fact that some abused wives may have sound reasons for wishing not to testify against their husbands. Therefore, it is an improvement over both the formal equality approach and the traditional nonsubordination theory approach to this issue.

The proposal does have a major drawback, however, in that it provides substantial discretion to judges, many of whom may not be sensitive to the dynamics of battering and who may not be able to discern why a woman wishes not to testify against an abusive husband. For example, under the proposed bill, one criterion a judge should consider when deciding whether or not to compel a battered woman to testify is "the condition of the relationship of the spouses and the possibility of saving the marriage."<sup>425</sup> A judge who believes that most marriages can and/or should be saved, a likely possibility given the teachings of the Greek Orthodox Church and the percentage of Greek Cypriots who are practicing Greek Orthodox Christians might be inclined to exercise his or her discretion not to compel the victim to testify.

In addition, a judge must consider whether repetition of violence is likely.<sup>426</sup> If a judge is inclined to view a marriage as salvageable, he or she might also be inclined to minimize the likelihood that the husband will commit more violent acts. Yet a domestic violence victim who

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423. See *supra* notes 265–67 and accompanying text.

424. Law Entitled Law Which Amends the Violence in the Family (Prevention and Protection of Victims) Law § 8(4) 1994, (Mar. 1996) (Cyprus).

425. Law Which Amends the Violence in the Family (Prevention and Protection of Victims) Law 1994, § 8(4)(b) (Mar. 1996) (Cyprus).

426. See Law Which Amends the Violence in the Family (Prevention and Protection of Victims) Law 1994 § 8(4)(c) (Mar. 1996) (Cyprus).

refuses to testify might not think that her marriage is salvageable. She might also fear that her husband will be violent toward her in the future, but hesitate to testify in court because she finds the prospect intimidating.<sup>427</sup> Thus, under the proposed amendment, a judge might relieve the woman from testifying even though she would be happy to testify if only somebody helped her to work her way through the court system.

Thus, in order for this proposed amendment to be effective, judicial discretion as to whether a domestic violence victim should testify should be tempered by a provision requiring that the victim be assigned an advocate.<sup>428</sup> The advocate would help the victim assess her needs and present them to the judge before the judge decides whether she should testify. Although it would be appropriate for the advocate to be a Family Counsellor as provided by Section 15 of the 1994 Violence in the Family Law,<sup>429</sup> the proposed amendment should specifically include this additional function of the Family Counsellor as victim advocate. In addition,

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427. While I could find no written information about the experience of Cypriot domestic violence victims when they go to court, my interviews with domestic violence workers indicated that they are often treated badly. See Interview with Katia Constantinou and Stavria Thalassi, *supra* note 118.

428. See Dalton & Schneider, *supra* note 3.

429. The Violence in the Family (Prevention and Protection of Victims) Law 1994, § 15. Section 15 provides:

- (1) The Minister appoints welfare officers for the purpose of carrying out the duties of Family Counsellor giving better effect to the provisions of this Law.
- (2) The Family Counsellor shall have the following functions:
  - (a) to receive complaints of use of violence and carry out the necessary investigations;
  - (b) to advise, counsel and mediate for the solution of any problems in the family that are likely to lead or have led to the use of violence;
  - (c) to make arrangements for immediate medical examination of the complainant;
  - (d) to take, if considered necessary, all the steps for the commencement of criminal proceedings against the perpetrator;
  - (e) to carry out investigations in relation to the financial state of the family in general and of the perpetrator in particular in cases where an inhibition order is contemplated;
  - (f) to carry out investigations and make arrangements for the accommodation of the accused of his family in case an inhibition order is issued;
  - (g) any other function which the Minister may assign to him.

Family Counsellor training should specifically address this function. Finally, more Family Counsellors would need to be appointed so that the Family Counsellors would have sufficient time to devote to their function of victim advocate.

In sum, the proposed amendment recognizes that many battered women, because of their social training and social pressures, become accomplices to their own subordination. At the same time, it recognizes the possibility that a battered woman's desire not to testify may be a sign of a realistic assessment on her part of her options. Finally, in a society where women's voices, particularly those of battered women, have been so little heard, it assures that their voices will be heard prior to any decision being made that may fundamentally affect their lives and well-being. If the proposed amendment incorporated Dalton and Schneider's concept of a victim advocate, it would be a tremendous step forward in dealing with the problem of domestic violence in the Republic of Cyprus.

*B. Applying the Greek Cypriot Experience  
to the American Experience*

For reasons similar to those I have presented about the situation in the Republic of Cyprus, Dalton and Schneider's approach best addresses the question of whether victims should be required to testify against their abusers in the United States as well.

First, formal equality does not satisfactorily take into account the American experience of domestic violence. As in Cyprus, the notion that victims can freely choose to leave their abusers can only be based on abstract principles of choice. Numerous commentators have portrayed the danger that battered women face if they try to leave their abusers,<sup>430</sup> thereby dispelling the myth that victims can freely choose to leave abusive relationships. As Mahoney points out, "the most complete description of women's suffering from domestic violence has entered our case law and legal literature . . . when battered women kill in self-defense."<sup>431</sup> For example, in *State v. Norman*,<sup>432</sup> the defendant killed her husband after a long history of abuse. "His physical abuse . . . included slapping, punching and kicking her, striking her with various objects,

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430. See, e.g., Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 71-93 (1991) (discussing "separation assault").

431. Mahoney, *supra* note 430, at 35 n.138.

432. *State v. Norman*, 378 S.E.2d 8 (N.C. 1989).

. . . throwing glasses, beer bottles and other objects at her[,] . . . putting her cigarettes out on her, throwing hot coffee on her, breaking glass against her face[,] and crushing food on her face."<sup>433</sup> In addition, her husband forced her to prostitute herself, beating her if she resisted doing so or did not make enough money. "[O]n a few occasions [he] made her eat pet food out of the pets' bowls and bark like a dog. He often made her sleep on the floor. . . . [H]e deprived her of food and refused to let her get food for the family."<sup>434</sup> He also threatened many times to kill and maim her.<sup>435</sup> She testified that "she was too afraid of her husband to press charges against him or to leave him" because she had left home temporarily on several occasions and "he had always found her, brought her home[,] and beaten her."<sup>436</sup>

Statistics demonstrate that Ms. Norman had good reason to be afraid to leave her husband despite the terrible abuse he inflicted upon her. Often women are at increased risk of being harmed by their husbands after separation.<sup>437</sup> Mahoney, for example, discusses the case of *Godfrey v. Georgia*,<sup>438</sup> in which an abused wife left her husband after he threatened her with a knife and damaged some of her clothing. Refusing his requests to reconcile, she went to the Justice of the Peace and secured a warrant charging him with aggravated assault. She also filed for divorce. Her husband responded by taking a shotgun and killing her, her mother, and injuring the couple's daughter.<sup>439</sup>

Given that this kind of abuse is still prevalent in our society and that our legal system is often overwhelming and discouraging to victims of domestic violence,<sup>440</sup> it is clear that in America, as in Cyprus, a formal equality approach to domestic violence issues is inappropriate. The danger that women continue to face when they confront the difficult choice of whether to leave their husbands is too great for the State to refrain from taking any steps to help them.

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433. *Norman*, 378 S.E.2d at 10.

434. *Norman*, 378 S.E.2d at 10.

435. *See Norman*, 378 S.E.2d at 10.

436. *Norman*, 378 S.E.2d at 11.

437. *See Mahoney, supra* note 430, at 5-6 n.21 (citing Desmond Ellis, *Post-Separation Woman Abuse: The Contribution of Lawyers as "Barracudas," "Advocates," and "Counselors,"* 10 INT'L J.L. & PSYCHIATRY 403, 408 (1987); CYNTHIA K. GILLESPIE, JUSTIFIABLE HOMICIDE 150-52 (1989); ANN JONES, WOMEN WHO KILL 298-99 (1980)).

438. *Godfrey v. Georgia*, 446 U.S. 420 (1980).

439. *See Godfrey*, 446 U.S. at 424-25.

440. *See Mahoney, supra* note 430, at 43-49.

Second, also as in the Republic of Cyprus, traditional nonsubordination theory does not present the entire picture of American women's lives. If we continue the trend of requiring domestic violence victims to testify against their abusers regardless of the circumstances, the circumstances of the individual victim will be ignored. Commentators such as Mahoney have provided us with details of the lives of battered women that suggest valid reasons often exist for choosing not to testify against one's abuser.<sup>441</sup> Mahoney points out that battered women realistically fear that they will lose their children if they leave their husbands.<sup>442</sup> She also discusses the fact that batterers use the legal system to keep their wives from leaving and that of the many women whose stories appeared in her article, all but one who had children at the time of their divorce either fought a custody action or were threatened with one.<sup>443</sup> Finally, she indicates that even violent men are frequently successful in custody suits, citing several studies<sup>444</sup> showing that a substantial percentage of battering fathers are awarded custody of their children.<sup>445</sup>

To demonstrate the danger of losing their children that battered women in America face, Mahoney presents the experience

of a woman who left her husband after a third 'physically assaultive incident' [which] endangered their infant son. She went into hiding with relatives and consulted an attorney to file protective orders and obtain divorce. [Her] husband sought custody and claimed that his wife's disappearance . . . proved her instability. . . . The state placed the child with [her husband's] family because they were considered stable; his family then sought to restrict [her] visitation. The welfare department finally recommended the baby remain with the grandparents . . . .<sup>446</sup>

Mahoney makes clear that some battered women will choose to remain with an abusive husband not out of weakness but out of a realistic

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441. See also Littleton, *supra* note 404.

442. See Mahoney, *supra* note 430, at 43-44.

443. See Mahoney, *supra* note 430, at 44.

444. See Mahoney, *supra* note 430, at 45.

445. See, e.g., Mahoney, *supra* note 430, at 45 n.202 (citing PHYLLIS CHESLER, *MOTHERS ON TRIAL: THE BATTLE FOR CHILDREN AND CUSTODY* 81 (1986) (citing a study finding that 59% of fathers awarded custody "had physically abused their wives" and 36% "had kidnapped their children")).

446. Mahoney, *supra* note 430, at 46 (citing ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* 112-13 (1987)).

assessment that to do otherwise might result in their losing custody of their children.

Thus, as in the Republic of Cyprus, although a provision requiring victims of domestic violence to testify may have strong appeal to persons eager to combat the devastating effects of domestic violence, such a provision does not adequately respond to the different needs of battered women in our society. If a battered woman believes that if she leaves her abuser he will seek custody of their children and might well prevail, she should not automatically be required to testify against him. To require her to do so would unfairly undermine her efforts at exercising some agency. And, when a woman is a victim of domestic violence, the State should be encouraging rather than discouraging her to exercise agency.

After eliminating the applicability of the other two theories, it is necessary to consider the appropriateness of the nonsubordination theory modified by partial agency approach represented in Dalton and Schneider's article—that of assigning a victim advocate.<sup>447</sup> Indeed, this approach is the most appropriate one for the United States for the same reasons that it is most appropriate for the Republic of Cyprus. Mahoney describes the mindset of women who choose, for a time, to stay in a battering relationship as often motivated by love and hope.<sup>448</sup> She describes, for example, a woman in her support group for battered wives who “was strikingly strong and serene.”<sup>449</sup> She was a legal secretary who earned a good salary and was “attractive, intelligent, thoughtful.”<sup>450</sup> She revealed that her husband was an alcoholic. She added:

[W]e've been married 13 years. I have three children. For nine of those years he was the best husband and father anyone could have asked for. The way I look at it, he has a disease. . . . I may have to leave. But if I do, I'm giving up on a father for the children, and I'm giving up on him. . . . I may have to decide to go. But I'm not going to do it lightly.<sup>451</sup>

The Dalton and Schneider approach acknowledges that most victims of domestic violence are traumatized and need assistance; at the same

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447. See Dalton & Schneider, *supra* note 3 (stating that an advocate of a victim of domestic violence would work with the victim to determine whether it is in the victim's best interest to testify against her abuser).

448. See Mahoney, *supra* note 430, at 21.

449. Mahoney, *supra* note 430, at 21.

450. Mahoney, *supra* note 430, at 21.

451. Mahoney, *supra* note 430, at 21.

time, it recognizes that many victims may be able to assess their own needs and to make decisions in their own and their children's best interest. This approach would provide assistance to women without presuming to determine what is best for such a woman when she is obviously capable of making the ultimate determination herself and when it is she who will have to live with the consequences of her decision.

### CONCLUSION

One of the major contributions of feminist jurisprudence has been the introduction of the experience of women into legal discourse. Through consciousness raising, women have shared their experiences, and their voices have been heard. The pain of victims of domestic violence has been revealed. The phenomenon of domestic violence victims frequently changing their minds about whether to press charges and testify against their abusers, moreover, has been brought to the forefront.

This Article has explored this phenomenon from three different feminist perspectives—formal equality, MacKinnon's nonsubordination theory, and nonsubordination theory modified by a partial agency component. Using the experience of the Republic of Cyprus with this issue, this Article analyzed which of these three approaches best incorporates and responds to the experiences of victims of domestic abuse.

The Republic of Cyprus is a transitional society in which the rights of women have only recently begun to emerge. Under these circumstances, it becomes clear that a formal equality approach to issues of domestic violence is inadequate. Abstract pronouncements of women being free to choose whether to stay with their abusers ignore the reality that many women are trapped in circumstances beyond their control. Nonintervention by the State simply legitimizes the violence to which these women are being subjected.

On the other hand, at first blush, it would appear that MacKinnon's nonsubordination theory would be most appropriate when trying to craft legal responses to issues pertaining to domestic violence in that society, given the extent of patriarchy still in Cyprus. It would seem that any protection that the State can give to Greek Cypriot victims of domestic violence should be encouraged.

Upon deeper reflection, however, this is not necessarily the case. Because the Republic of Cyprus is now a transitional society, patriarchy is not as firmly entrenched there as it was when it was a traditional

society.<sup>452</sup> While the State's need to protect battered women remains a paramount concern, other factors also merit consideration. Concerns about robbing women of their right to assess their own situations and to choose their own paths are legitimate.

Thus, when one examines the situation more closely, nonsubordination theory modified by a partial agency component provides a better framework with which to deal with issues of domestic violence in a transitional society. It most accurately reflects the spectrum of women's experiences, even battered women, in such a society. It recognizes that domestic violence victims in a strongly patriarchal society do not have completely free choice as to how to proceed with their lives and that they often need help from the State in order to be safe. Yet, it also recognizes that women in a transitional society are not completely subordinated. Some domestic violence victims do have a degree of choice when they assess their situations and the State should not deprive them of that possibility.

The implications of this analysis are highly relevant to the dialogue in the United States about whether domestic violence victims should be required to testify against their abusers. In an effort to combat the high incidence of domestic violence in our society, some jurisdictions are moving towards requiring domestic violence victims to testify against their abusers.<sup>453</sup> Commentators have welcomed this trend.<sup>454</sup>

Again, MacKinnon's nonsubordination approach is very appealing at first. Even more so than in Cyprus, however, closer examination reveals that it is not the best approach for the United States to take when dealing with this issue. As in Cyprus, a formal equality approach to issues of domestic violence in the United States does not work. Although our society is more advanced than Cypriot society in recognizing the rights of women, it is still deeply patriarchal. Women in battering situations often still have limited choices and the State must bear some responsibility in helping them to extricate themselves from the violence to which they are being subjected. To do otherwise would be simply to reinforce the perceptions that battering is acceptable behavior.

Requiring all victims of domestic violence to testify, however, whether they wish to or not, is also inappropriate. Many American

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452. See *supra* Part II.A.2.

453. For a discussion of the variety of approaches jurisdictions are taking to this issue, see *supra* Part I.

454. For a discussion of the arguments of several commentators in support of this trend, see *supra* Part I.



women, including victims of domestic violence, do not fit MacKinnon's description of being totally victimized by men.<sup>455</sup> Women in our society, including battered women, often maintain a strong degree of agency which needs to be respected.

Indeed, a nonsubordination theory modified by partial agency approach to issues pertaining to domestic violence issues is even more appropriate for the United States than for the Republic of Cyprus. Greek Cypriot society is very homogenous, while our society is highly diverse.<sup>456</sup> Thus, the experiences of battered women in the United States are more diverse than the experiences of battered women in the Republic of Cyprus. If we are to listen to the voices of women when we formulate legal approaches to issues that affect their lives, we have a heightened obligation to pay attention to the diversity of women's voices in our pluralistic society. A nonsubordination theory modified by partial agency approach provides us with the best framework in which to do that.

The nonsubordination theory modified by partial agency approach dictates that we find a middle ground between requiring that victims of domestic violence testify and providing no support to them when they make this difficult decision. As Schneider and Dalton argue, if the State provides sufficient support to victims of domestic violence, they will cooperate with prosecutors in most cases.<sup>457</sup> Thus, in the Republic of Cyprus, the Violence in the Family Law should be amended not only to provide judges with the discretion of whether victims should be required to testify but also to expand upon the role of Family Counsellors so that they may function as victim advocates.<sup>458</sup> Similarly, in the United States, jurisdictions struggling with this issue should not require that victims of domestic violence testify against their abusers but, instead, should provide sufficient support to these victims so that they can determine whether to do so is in their best interest and, if it is, to help them to get through this painful process.

In sum, one of the major challenges to feminist theory is the need to respond to the common experiences of women without eliminating

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455. See *supra* Part III.B.2.

456. For a discussion of the need for the law to recognize the diversity of American women's experiences, see Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Jennifer Nedelsky, *The Challenges of Multiplicity*, 89 MICH. L. REV. 1591 (1991) (reviewing ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988)).

457. See Dalton & Schneider, *supra* note 3.

458. See *supra* Part IV.A.3.

the uniqueness of the experience of different groups of women and of the different women within those groups. Nonsubordination theory modified by a partial agency component provides the most realistic framework in which to develop legal solutions pertaining to domestic violence for societies that maintain a significant degree of patriarchy because it incorporates women's dual experiences of victimization and agency. If in a society such as the Republic of Cyprus, where the rights of women have been recognized much more recently than in the United States, MacKinnon's nonsubordination theory approach is inappropriate, it does not make sense in a society such as ours. Therefore, we should not be requiring abused women to testify against their abusers. We should be providing them with assistance in making the difficult decision of whether to testify against their abusers and, if they choose to do so, in carrying out their decision. ✽

