

Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence

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ABSTRACT

How does a person come to understand his or her problems in terms of rights? This is a critical problem for the battered women's movement as well as for other human rights movements that rely on rights awareness to encourage victims to seek help from the law. The adoption of a rights consciousness requires experiences with the legal system that confirm that subjectivity. Rights-defined selves emerge from supportive encounters with police, prosecutors, judges, and probation officers. This empirical study shows how victims of violence against women come to take on rights consciousness.

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Research for this paper was generously supported by the National Science Foundation Law and Social Sciences Program grant # SBR-9320009, and the American Bar Foundation Visiting Fellow Program. She is grateful to Marilyn Brown, Tami Miller, and Madelaine Adelman for research assistance on this project. The paper was presented to the Chinese Academy of Social Sciences in Beijing, China in 2001 and benefitted from audience comments.

I. INTRODUCTION

From civil rights to human rights, rights talk remains a dominant framework for contemporary social justice movements. But seeing oneself as a rights-bearing subject whose problems are violations of these rights is far from universal. How does a person come to understand his or her problems in terms of rights? It is the contention of this article that the adoption of a rights consciousness requires experiences with the legal system that reinforce this subjectivity. Adoption of rights-defined selves depends on encounters with police, prosecutors, judges, and probation officers that reflect back this identity. Indications that the problem is trivial, that the victim does not really have these rights, or that the offender does not deserve punishment undermine this subjectivity. How to persuade victims to take on a rights-defined self is a critical problem for the battered women's movement, which relies heavily on rights talk to encourage abused women to seek help from the law.¹ It is also fundamental to a range of other rights-based social reform movements that depend on victim activism and rights claiming in order to promote change such as disability rights and employment rights. The human rights movement depends both on government compliance with international treaties and victim advocacy for these rights. Thus, examining how vulnerable populations come to see their difficulties as human rights violations is a fundamental question for human rights activists. This empirical study shows how victims of violence against women come to take on rights consciousness. It describes an interaction between consciousness, experience, and institutional receptivity that is critical to human rights practice.

The battered women's movement has always relied on a criminal justice component to its activism, which encourages victims to see their violation as a crime and to turn to the legal system for help.² As the global movement expands in the wake of the Vienna conference in 1993 and Beijing in 1995, a rights approach is increasingly important. The 1993 conference in Vienna focused on human rights and articulated the principle of women's rights as human rights, while the Beijing Fourth World Conference on Women in 1995 emphasized women's rights and reinforced

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1. See ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* (2000).
 2. See *id.* In her recent comprehensive discussion of law and the battered women's movement, Schneider asks about the implications of using a rights approach for this problem. As she points out, early activists saw the problem as the product of larger structural forces but also relied on the law as a way to define the problem and to intervene in it. The structural analysis of gender violence has persisted in the global human rights movement but is increasingly missing from the US movement. *Id.* See also SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* (1982).

the idea that women's rights are human rights. Yet, despite considerable emphasis on rights by shelter staff and court advocates, battered women are often slow to take on rights. Even after calling the police for help and filing for temporary restraining orders, battered women are likely to refuse to testify or to drop the restraining order. They clearly fear retaliation by the batterer, but they also resist the shift in subjectivity required by the law. This resistance often stems from a sense of self that is deeply at odds with other senses that are rooted in family, religion, and community. Taking on a rights-defined self in relation to a partner requires a substantial identity change both for the woman and for the man she is accusing. Instead of seeing herself defined by family, kin, and work relationships, she takes on a more autonomous self protected by the state. At the same time, her actions allow the law to define her husband/partner as a criminal under the surveillance and control of the state. A battered woman may be pressured by kin to feel she is a bad wife, while her partner may claim she is taking away his masculinity. The only way she can rescue him from this loss is to deflect the very legal sanctions she has called down upon him. It is hardly surprising that abused women will ask for help from the law, back away, and then ask again. Such women appear to be difficult or "bad" victims since they typically file charges then try to drop them or fail to appear for restraining order hearings. Yet, these women are tracking back and forth across a significant line of identity transformation.

A substantial body of literature in the law and society field has explored the contribution of rights talk to social movement activism.³ From pay equity movements,⁴ to mental health patients' rights movements,⁵ to the contemporary expansion in the human rights movement, the mobilization of a rights language has proved critical for activists.⁶ The literature on rights consciousness in social movements tends to focus on activists.⁷ While activists turn to rights talk, however, vulnerable populations seem less inclined to do so. For example, Gilliom's research on welfare mothers in the United States suggests that this vulnerable population does not respond to their experience of extensive surveillance by asserting privacy rights.⁸ Yet, many rights-based social movements, including human rights ones, depend

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3. See SCHNEIDER, *supra* note 1; STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* (1974); JOHN GILLIOM, *OVERSEERS OF THE POOR: SURVEILLANCE, RESISTANCE, AND THE LIMITS OF PRIVACY* (2001).
 4. MICHAEL W. McCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* 5 (1994).
 5. See Neal Milner, *The Right to Refuse Treatment: Four Case Studies in Legal Mobilization*, 21 *LAW & SOC'Y REV.* 447 (1987).
 6. See MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS WITHOUT BORDERS* (1998).
 7. See McCANN, *supra* note 4.
 8. GILLIOM, *supra* note 3.

upon individuals defining their problems in rights terms and taking action on that basis. The battered women's movement is one example of such a movement, while the international violence against women movement within the human rights framework is another. Without victim participation in the identification of violence in rights terms, movement activists are unable to further their social reforms. Thus, understanding under what conditions an individual victim comes to redefine her problem as an offense that violates her rights, rather than as a burden of everyday married life, is critical for the study of rights in social movements.

Despite a rich literature on rights in social movements, we know relatively little about why and when a person adopts rights talk. Michael McCann's study of the pay equity movement shows that rights talk is a powerful reform discourse in the USA, but he focuses on activists who become leaders in the movement rather than on the followers who come to understand their problems in terms of rights.⁹ He suggests that features of personal history and orientation toward activism are important, but that winning some legal victories is also critical.¹⁰ The use of rights in the pay equity movement was encouraged by significant victories in the courts in the early 1980s,¹¹ but as the tide of legal judgments turned against the movement in the late 1980s, legal decisions were less effective in mobilizing media attention and support. Neal Milner observed a similar pattern in mental health cases.¹² Yet, the definition of the pay equity problem in rights terms remained a powerful tool for local and state-level activists. Activists saw rights talk both as a social ideal and as an effective tactic for the movement because of its widespread resonance with underpaid female workers.¹³ But it is not as clear that rights talk is as powerful with victims, as Gilliom's study of welfare mothers indicates.¹⁴ These women talk about the importance of caring for their families and express anger and frustration at the high degree of surveillance they experience, but they very rarely assert a right to privacy. Ewick and Silbey's study of varieties of legal consciousness suggests several different ways individuals relate to law, many of which are not based on rights consciousness.¹⁵

In this article, I argue that the adoption of a rights-defined identity under identity-shifting circumstances such as battering depends on the individual's experience with the law. One of the powerful consequences of bringing

9. McCANN, *supra* note 4, at 100; see also SCHEINGOLD, *supra* note 3.

10. McCANN, *supra* note 4, at 53–58.

11. *Id.* at 277.

12. Milner, *supra* note 5.

13. See McCANN, *supra* note 4, at 236.

14. GILLIOM, *supra* note 3.

15. PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW* (1998).

gender violence cases to the attention of the legal system is the victim's and perpetrator's encounters with the new subjectivity defined within the discourses and practices of the law. Interactions with police officers, prosecutors, probation officers, judges, shelter workers, feminist advocates and even bailiffs affect the extent to which an individual victim is willing to take on this new identity. Do the police make an arrest or tell him to take a walk? Does the prosecutor press charges or *nolle prosequi* the case? Does the judge impose prison time or dismiss the case? Does she offer a stern lecture or mumble the charge and penalty? These are all indications of how seriously the legal system takes her rights. If the police are friendly to the man and fail to arrest him, if the judge suggests that battering is not a serious offense, and if the court imposes no prison sentence, this experience undermines the woman's rights subjectivity. If police act as if battered women do not have the right to complain about the violence of their husbands, then these women are discouraged from seeing themselves as having such a right. If their partners, relatives, friends, and neighbors tell battered women that a "good wife" does not take her husband to court and that she provoked him, she may also be deterred. Thus, an individual's willingness to take on rights depends on her experience trying to assert them. The more this experience reflects a serious belief that she is a person with a right not to be battered, the more willing she will be to take on this identity. On the other hand, if these rights are treated as insignificant, she may chose to give up and no longer think about her grievances in terms of rights.

To explore subjectivities produced by the encounter with the legal system, my research assistants and I interviewed thirty women and twenty-one men about their experiences with the legal system, and their reactions to the experience. This research was conducted in a small town in Hawai'i, a place typical of rural agricultural regions of the US, but different in its colonial and plantation past and contemporary diversity of ethnicity.¹⁶ All of those interviewed had experiences with the family court and/or the district court, as well as participating in a court-mandated batterer intervention program or women's support group. The interviews were supplemented by an analysis of the discussions within women's support groups and men's batterers groups.¹⁷

16. SALLY ENGLE MERRY, *COLONIZING HAWAII: THE CULTURAL POWER OF LAW* (2000).

17. Each of these interviews was done in person and lasted between one and two and a half hours. I did twelve of the interviews and my research assistants did the rest. Fourteen of the women's interviews were conducted by Leilani Miller, six by Marilyn Brown, seven by Madelaine Adelman, and three by me. Leilani Miller's method was to read to the person interviewed what she had written to verify that she had written it in their words while Madelaine taped the interviews. I interviewed nine men, Leilani Miller interviewed six, Linda Andres talked to three, Marilyn Brown two, and Joy Adapon one, all of whom

The town of Hilo is a small port city of about 45,000 that serves a sprawling agricultural region and provides a hub for governmental, educational, medical, and retail services, as well as some tourism. Local feminists started a shelter in Hilo in 1978,¹⁸ and in 1986, by working with an active and committed local judiciary, developed a violence control program that offered training for batterers and a women's support group. The dominant ethnic groups in the town are Japanese-Americans, whites, Native Hawaiians, Filipino-Americans, Portuguese, and a wide variety of combinations of people with ancestries from these regions, as well as from Korea, China, Puerto Rico, South Pacific Islands, and Mexico.

In this town, the number of cases involving violence against women in the courts has expanded dramatically over the last twenty-five years, particularly during the period of the early 1990s. While the population of the county surrounding this town has doubled over the last twenty-five years, the number of calls to the police for help has grown eight times, the number of requests for protective orders has jumped from one or two a year to 710 in 1998, and the number of arrests for abuse of a family or household member has increased from none to over 1200 reports to the police and 855 cases in the courts in 1998. This dramatic increase in the number of cases of wife beating in the courts may reflect an increase in battering, but it also shows a major increase in help-seeking from the law. In most cases, the victim has taken the initiative to call the police for help or to ask the family court for a restraining order. Those who call on the legal system for help have taken a step toward seeing themselves as defined by the promises and protections of rights, even in the domain of the family. At the same time, there have been substantial changes in law, the police, and especially the courts that have encouraged women to use the law. And, most important, a strong battered women's movement in Hilo has developed a shelter, a women's support group, and batterer's intervention program in the town, along with engaging in substantial community education.¹⁹

were research assistants on the project. These interviews were conducted between 1991 and 1994, the years of the greatest expansion of gender violence cases in the courts. The interviews included both partners in six couples, although each member was interviewed separately. Interviews were solicited by researchers who attended the men's and women's groups and invited participants to volunteer in exchange for a small stipend. Although interviewees were told that the research was an independent project, it is very likely that they saw the project as closely connected to the ATV program itself.

18. See Noelle Maria Rodriguez, *A Successful Feminist Shelter: A Case Study of the Family Crisis Shelter in Hawaii*, 24 J. APPLIED BEHAV. SCI. 235-50 (1988).
19. I have been doing ethnographic research on the legal management of gender violence in Hilo since 1991 and have compiled the information about Hilo through interviews, court records, police reports, and extensive discussions with officials and activists working on domestic violence in Hilo.

II. SHIFTING SUBJECTIVITIES

The post-structuralist concept of the self as the location of multiple and potentially contradictory subjectivities, each established within discourses and discursive practices, provides a helpful way to conceptualize the complex positioning of women who turn to the law in crises of violence. In Henrietta Moore's description of the post-structuralist gendered subject, each individual takes up multiple subject positions within a range of discourses and social practices, so that a single subject is not the same as a single individual.²⁰ What holds these multiple subjectivities together are the experience of identity, the physical grounding of the subject in a body, and the historical continuity of the subject.²¹

"If subjectivity is seen as singular, fixed, and coherent, it becomes very difficult to explain how it is that individuals constitute their sense of self—their self-representations as subjects—through several, often mutually contradictory subject positions, rather than through one singular subject position."²² Instead of seeing gender as a single gender system, anthropology has moved toward an understanding of gender by examining how "individuals come to take up gendered subject positions through engagement with multiple discourses on gender."²³ Although this framework appears to emphasize choice, Moore emphasizes that there are dominant and subdominant discourses that are both reproduced and in some ways resisted.²⁴ This model opens up the possibility of multiple femininities and masculinities within the same context, onto which gender differences are again inscribed, so that some masculinities appear more feminine and others more masculine, with the hierarchical relationship between the genders reinscribed on these variations within a gender in a particular social context.²⁵ Moore notes that this theory of gender as consisting of multiple, possibly contradictory competing discourses enables the question, how do people take up a position in one discourse rather than another?²⁶

This framework provides a way of thinking about battered women's experience with the law. In going to the law, a woman takes on a new subject position, defined in the discourses and social practices of the law. She tries it on, not abandoning her other subject positions as partner or wife,

20. Henrietta Moore, *The Problem of Explaining Violence in the Social Sciences*, in *SEX AND VIOLENCE: ISSUES IN REPRESENTATION AND EXPERIENCE* 141 (Penelope Harvey & Peter Gow eds., 1994).

21. *See id.*

22. *Id.* at 141.

23. *Id.* at 142.

24. *Id.*

25. *Id.* at 146–47.

26. *Id.* at 149.

member of a kinship network that usually includes her partner's family as well as her own, along with other subject positions such as "local," Christian, and poor. She is, in a sense, seeing how it goes. The experimental subject position includes assertiveness, claims to autonomy, and mobilization of the power of the law. The encounter with the courts is an exploration of the dimensions of this position, the experience of taking it on, of seeing how it conforms with or contradicts other subject positions she occupies. There are risks: going to court typically precipitates an angry and hostile response from the partner. Indeed, her assumption of this new legally constituted subject position may be interpreted as a direct challenge to his masculinity. Insofar as women are required to confirm a man's masculinity by their adoption of a feminine subject position, "[t]he inability to maintain the fantasy of power triggers a crisis in the fantasy of identity, and violence is a means of resolving this crisis because it acts to reconfirm the nature of a masculinity otherwise denied."²⁷ Violence is then a sign of the struggle for the maintenance of certain fantasies of identity and power. Violence emerges, in this analysis, as deeply gendered and sexualized and as a consequence of her turning to the law for help.

The woman calling the police and pressing charges is thwarting the fantasy of power and identity of masculinity in dominant discourses. As her partner struggles to reassert his masculinity through reestablishing his control over her, she may find the new subject position within the law an alienating and empty one. It may disrupt her relations with her kin and her partner as she receives pressures to leave him and turn to a new source of support in social services and legal officials. This is a subject position shaped by the discourses of autonomy, choice, and reasonable behavior, not by love, anger, hurt, and ambivalence. The move into this subject position initiates a period of tension, a continual questioning if it is worth it. Those who press on, who continue to take on this subjectivity, are people for whom this new position has something to offer. Perhaps they have less to lose from others who oppose them.

Although there has clearly been a substantial increase in the number of women willing to turn to the courts, many try this position and discard it, returning to a subjectivity less challenging to their partners and perhaps to their kin. Such discarding can be temporary or permanent; individuals frequently proceed through a long sequence of putting on and taking off this subject position, perhaps holding it a little longer each time, depending on what the discursively constituted position of battered woman has to offer and the extent of contradiction with other subject positions. Indeed, women

27. *Id.* at 154.

are choosing between two incompatible subject positions, one the rights-bearing subject, the other the good wife. Each represents a vision of the self that produces self-esteem, but the battered woman cannot simultaneously enact both. Choosing either one represents a failure of the other. The practices of the legal system are thus of critical significance to the woman's decision as she ambivalently moves in and out of this subjectivity. Fragmentary evidence around the country of an explosion of cases in the late 1980s followed by a leveling off in the mid-1990s suggests some deep and enduring ambivalence about the legally defined subject position for situations of battering.

Law is particularly important to the redefinition of subjectivity. Hirsch and Lazarus-Black note "the productivity of the law—mobilized by the state and by individual actors—yields new subjectivities and thereby refigures relations of power."²⁸ Indeed, the making of subjectivity through law "is a particularly intimate locus for the operation of hegemony and resistance."²⁹ Judith Butler's performative conception of gender provides one way of thinking about the contribution of law. There is no "natural" or pre-social sex: it is the doing of gender that creates it. Gender is an identity which is "performatively constituted by the very 'expressions' that are said to be its results."³⁰ Among the regulatory practices that generate the identities of gender is law: following Foucault, Butler argues that juridical power produces what it claims only to represent. "In effect, the law produces and then conceals the notion of a 'subject before the law' in order to invoke that discursive formation as a naturalized foundational premise that subsequently legitimates that law's own regulatory hegemony."³¹ Thus, gender is continually transformed through its performance in legally regulated contexts. It is constituted and reconstituted through regulatory practices such as the law that shift the conditions for performing gender. A change in legal practices for handling violence in intimate gendered relationships has

28. Susan F. Hirsch & Mindie Lazarus-Black, *CONTESTED STATES: LAW, HEGEMONY, AND RESISTANCE* 13 (Mindie Lazarus-Black & Susan F. Hirsch eds., 1994).

29. *Id.* This example shows the connection between the techniques of productive power Foucault describes—normalization, the production of personhood, the discipline of the body—and the law. See MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1979). These techniques are fundamental to the array of social services attached to the criminal processes of modern law. Tracing these linkages shows how the disciplines gain power from the law and how the law is brought into the micro-technologies of power of everyday life. Through its productive engagement with the objects of its surveillance as well as the subjects of its intervention, legal conceptions and institutions reshape the way individuals think of themselves and their relationships to their intimate social worlds and the state. And in doing so, they redefine law itself, which exists only as it is interpreted and understood within the wider society.

30. JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 25 (1990).

31. *Id.* at 2.

produced a new doing of gender³² within a changing system of regulatory constraints.

Gendered subjectivity is redefined by doing legal activities: through acting as a legally entitled subject in the context of these injuries. As women victimized by violence call the police, walk into courtrooms, fill out forms requesting restraining orders, tell their stories of violence and victimization in forms and in response to official queries, they enact a different self. Such performances reshape the way these women think about themselves and the relationship between their intimate social worlds and the law. Turning to the courts for help in incidents of violence by partners represents a disembedding of the individual in the structure of kin, neighbors, friends, and churches in favor of a new relationship to the state. That one is a subject of the state in paying taxes may be a recognized aspect of the way the law defines the self; the state's obligation to protect a wife from her husband's violence in the home, or even his overbearing and critical manner in the absence of physical violence, has until recently not been a recognized aspect of selves even in the legally constituted American society. Categories such as the private domain of the family, insulated from state supervision by the patriarchal authority of the husband, although at the same time fully constituted by the state in its capacity to marry and divorce, may exist at the level of the unrecognized, the taken for granted, the hegemonic. It is these categories that are challenged by contemporary feminist movements about violence against women.

The promise of rights and the penetration of law into the patriarchal sphere of the family represent a radical transformation in gender and the family. The rapid movement of gender violence cases into the courts reveals this new awareness of a definition of the self as protected by law from violence even within the sphere of intimate, romantic relationships. It is not that the right to protection from assault has changed, but that the meaning of the sphere of the family as a private domain secluded from legal scrutiny has changed to one more porous.

Yet as women approach the legal system, their new subjectivity is mediated by their experiences with the law. They encounter widespread leniency concerning these cases. When police fail to arrest, prosecutors fail to push a case forward, or probation officers fail to compel an offender to attend the battering program, the rights-bearing endowed self is compromised. As women confront the demand to testify against an offender in open court, unsure of the penalty that will follow, but certain of the anger he feels

32. The phrase "a new doing of gender" refers to performative theories of gender, which argue that gender is not an innate characteristic of a person, but a set of actions and presentations of self that announce and display gender and that fall along a continuum rather than falling into dichotomous categories.

as a result of her testimony, the nature of the new subjectivity offered to her by the law appears ambiguous and unclear. When women find that their batterers are not punished but sent to violence control programs, they hope for reform.

Women encounter conditional help. Becoming an entitled person in this situation depends on being the rational person who follows through, leaves the batterer, cooperates with prosecuting the case, and does not provoke violence, take drugs or drink, or abuse children. A woman's ability to perform such a self is conditional upon conforming to the law's definitions of rational and autonomous reactions to violence. The victim of violence encounters this conditional definition of the legally protected self offered to her as she endeavors to assume the proffered identity. She acquires a new self, now no longer enclosed in the private sphere of the family but constituted by the law even within that family, but it is a self wrapped in expectations of a continued commitment to prosecution and severing the relationship with the violent man.

It is not surprising, given the significance of this cultural change for concepts of privacy, that there are significant class differences in the extent to which women have participated in the opening of the family to legal surveillance. One of the consequences of opening the family to legal surveillance is a loss of control. The law takes over the case and imposes penalties on the perpetrator, whether or not the victim wishes them. There may also be a public announcement of the problem, at least in court if not, as in the town studied in this article, in the local newspaper. In Hilo, the town paper prominently publishes the names of all men arrested for abuse of a family and household member or violation of a protective order, listing them by name, age, and place of residence.

Thus, turning to the legal system for help is a difficult decision, in which the practices of the legal system itself are critically important. Even when a new law specifically criminalizing gender violence was passed in 1973 in Hawai'i, very few women filed cases. It was only after substantial changes in police practice, the elimination of the requirement to use an attorney to get a TRO, and greater attention to these cases by prosecutors and judges, that women began to turn to the law in larger numbers. The impact of an active feminist movement in the town, as well as increasing media attention, clearly affected women's willingness to complain. The law has constituted women as legal subjects no longer mediated by their embeddedness in family relationships, but now standing alone in relation to the state. At the same time, it has reduced the patriarchal privileges of males within the domain of the family. For poor families, such an opening to state surveillance was already well established by regulations governing welfare, child abuse, and housing allowances, and in earlier periods, vagrancy and alcoholism.

Thus, the new terrain is ambiguous, both offering a new legal self protected from violence by men, but providing in practice a far more limited and nuanced legal self whose protection is never fully guaranteed nor experienced. It is through experience, through encounters with the multiple responses of the police, prosecutors, courts, and probation officers, that a new legal subjectivity about gender violence is made, along with a new sense of marriage, family, community, and the place of the law. The law claims for itself the definition of gendered relationships within the family as well as outside the family, but ambivalently and uncertainly, creating areas of leniency and inaction that characterize this sphere of the law. Even as the law restricts men from using violence to control their partners, it does so in a contingent and variable fashion, incorporating the possibility of unmaking, as well as making, this change. There is a tension between the construction of new discourses of rights and the practices through which these promises are disclosed, which mediate the reconstitution of both male and female subjectivity.

One of the tensions is produced by the insistence of the legal system that the women it helps are "good victims."³³ Social movements that advocate the expansion of law into new domains represent the problem as requiring legal sanctions. Stories of innocent victims injured by malicious offenders are clearly the most powerful. These are the stories that have encouraged the law to engage in protecting women from intimate violence. The battered women's movement has always insisted on a broader and more complex analysis of the dynamics of battering,³⁴ but the law looks for innocent victims, labeling those who fight back as trouble and their problems as garbage cases.³⁵ The good victim in the law is not a woman who fights back, drinks or takes drugs along with the men, or abuses her children. When women act in violent and provocative ways or refuse to press charges or testify, legal officials are often frustrated. Women who do not fit the image of the good victim become redefined as troublesome and difficult and are likely to receive less assistance. Good victims are also those who follow through with their cases. To begin a legal case, then to drop it, then to go back for another TRO or to call the police again but not to testify in court, earns a woman the label of difficult and "bad" victim. Thus, the very hesitancy and ambivalence about making this identity change that women experience, as well as their desire to defend themselves, conspire to define them as "bad" victims. Obviously, representatives of the legal system,

33. The idea of a "good victim" emerged from my ethnographic research with individuals working with battered women in the courts and women's centers.

34. See SCHECHTER, *supra* note 2.

35. See SALLY ENGLE MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING CLASS AMERICANS* (1990).

and even some feminist shelter workers, are likely to be less supportive of the rights of those who are not "good" victims. And they are less likely to take on rights.

A new "good victim" is being constructed at this point, the battered child.³⁶ The child preserves an innocence that women seem not always to have. But this frame sometimes reveals the mother as abuser. Abusive mothers are sent to anger management programs as well as their partners, and those who refuse to leave their batterers face having their children removed by the state. Women now experience the expanded surveillance of the law, the demand to produce and analyze experiences with violence in order to have their children returned. And they must choose between staying with a violent man and giving up their children or keeping the children and giving up the man. Thus, the changing cultural construction of the good victim defines the privileged subject of legal assistance and excludes others as unworthy of help.

III. GENDERING THE TURN TO THE LAW

The interviews that my research assistants and I conducted, which are described in the introduction section of this article, indicate that the encounter with the law affects the way these people think about themselves in fundamental ways, but that there are enormous differences in its impact on men and women. While women respond by trying on and sometimes discarding what they usually see as a more powerful self, but also one whose adoption is scary, men resist and reject a diminished self that is not heard, is sometimes humiliated and ignored, and is subject to penalties both restrictive and expensive. The women talk about gaining courage and appreciating the help of the law, while the men talk about shock, anger, surprise, and a sense of betrayal by the women who have accused them. In an excruciating turn, the women typically feel some concern and even love for the men they have helped to humiliate while the men find solace in moments when the women drop charges or switch from a no-contact to a contact TRO. A woman's willingness to join with her partner in opposing or subverting the law recuperates some of his damaged identity as a man and allows him to confront the legal system, not as a diminished man whose wife no longer submits, but as a stronger man who still controls his wife and can count on her support. Thus, the woman assaults his masculinity by turning to the law, adopting its definition of her autonomous personhood and protection from violence, while gaining for herself greater control over his violence and domination in her relationship with him.

36. See BARBARA J. NELSON, *MAKING AN ISSUE OF CHILD ABUSE* (1984).

Insofar as gender hierarchies are mapped onto these new subjectivities, the woman could be said to become masculinized and the man feminized in this encounter. Concepts of masculinity and femininity are of course cultural products, culturally variable and the product of particular histories, but within a social space there is some level of shared understandings. I am referring to these concepts as they are located within the dominant American framework of masculinity and femininity, recognizing that there are regional, ethnic, class, and other variations within this general pattern. In the shape that gender takes within this community, the woman who gives in and withdraws from the legal process returns to a more feminized self and allows her male partner to recuperate his masculinity. Because gender is produced by such performances, the way that women and men chart courses through the tensions of violence and its legal regulation shapes their gendered selves. As they do law, they also do gender.

It is not surprising that women would adopt a tentative stance toward this transformation—trying it on, dropping it, trying it again—given the significance of the change and the mutually constitutive nature of gender. The way she plays gender affects the way the man with whom she is in a relationship can play gender. The move back to the more familiar femininity in which the man can oppositionally be a man is undeniably seductive, while the stance of refusing femininity opens her to his sense of betrayal, to the extent to which he is diminished both by the performances of the court and by her very rejection of feminine submissiveness. It is hardly surprising that this position seems scary to women and that they enter and leave it many times before finally seizing it more or less permanently as a new identity. Those women who have taken on this subject position, however, no longer express a sense of scariness and anxiety about court hearings and instead eagerly pursue their assailants in court. Such women may no longer be those most seriously victimized, leading some critics to argue that trivial incidents are coming under the scrutiny of the court. They are, however, the women who have moved through a series of experiments and reinforcements from others into a new subjectivity within the law. This probably accounts for what Judith Wittner finds is the court's central problem and "most baffling contradiction": women with the genuine and serious complaints of the type the court was designed to help frequently drop out, while women with the most minor and trivial complaints were often those who were most energetic about prosecuting, eager to see the perpetrator punished, and willing to return to court many times.³⁷ As Ferraro and Pope observe, at the point of arrest there is a dramatic and irreconcilable clash

37. Judith Wittner, *Reconceptualizing Agency in Domestic Violence Court*, in *COMMUNITY ACTIVISM AND FEMINIST POLITICS: ORGANIZING ACROSS RACE, CLASS, AND GENDER* 88–89 (Nancy A. Naples ed., 1998).

between the culture of power embodied in the law and the relational culture within which battered women live.³⁸

Women's ability and willingness to move into this subjectivity depends, of course, on how the law treats them. As the interviews indicate, the police play a critical role in either taking them seriously or telling them the bruises are insignificant or the assault minor. Women notice if the police chat and joke with the batterer. Both men and women attend closely to the demeanor of the judge, the things she says, and the extent to which penalties are actually imposed. As they move into this subjectivity, the support or opposition of kin and friends, including the man's kin, friends, and other women in the support group, are extremely important. One woman said that when she consulted with her friends, for example, she discovered that they were all in the same boat with her. Yet when they talked about their problems and hers, they did not urge her to leave the man. The staff of the feminist advocacy program, Alternatives to Violence (ATV) and the Shelter staff play critical roles in fostering this transformation of self. One woman, for example, said that the support of the ATV advocates in court was very helpful. "They really changed my life around." With the support of others in the women's support group, this woman said she was able to "tell off" her batterer, letting him know that he was "playing with her mind" and that she wanted him to leave her alone. She said in an interview that in the group she learned that despite her boyfriend's constant insults, she had nothing to be ashamed of. She was proud of the certificate she received from attending the support group, and commented that she and others framed them and put them on the wall. Taking on this new identity requires a social shift of some magnitude. For many abused women, their most important relationship is with the man. Taking on this subjectivity inevitably excludes him from her life unless he is willing to adopt the new identity the law offers him. Her ability to make this change depends on the social support she receives for the new identity offered to her by the law.

Difficult as the change is for women, the transformation for men into a new subjectivity that seems less masculine within dominant cultural frameworks is far more challenging. This new subjectivity represents the masculinity of a different social class, one to which few of these men have the education, income, or job skills to aspire. In effect, through the ATV program, the men are offered a masculinity developed by men of wealth and education in which authority over women depends on resources and allows some negotiation of power, an authority constructed by dominant whites, in place of that grounded in strength, physical competence, sexual

38. Kathleen J. Ferraro & Lucille Pope, *Irreconcilable Differences: Battered Women, Police, and the Law*, in LEGAL RESPONSES TO WIFE ASSAULT 96-127 (N. Zoe Hilton ed., 1993).

prowess, and control over women favored by the working-class men in Hilo. As a Native Hawaiian man in the program said, "ATV teaches the haole way of handling conflicts." As Connell's work indicates, masculinities are multiple and developed within particular class and cultural contexts.³⁹

The women are also offered a more middle class vision of family and gender relations. One woman, for example, a twenty-three-year-old unmarried mother of three, said that she has learned to communicate in ATV and she and her partner are now more aware of each other's feelings. "I feel like we can have the American Dream—now we can grow. I want it all too. I want the two-door garage, the house, and the big dog." Thus, the new subjectivity for women promises more control over her life, a new relationship to courts and the law, and the prospect of a more orderly and less chaotic life. Men, on the other hand, are encouraged to control their emotions and to see the legal system not as support for their gendered authority in the family, but as a source of surveillance and critique. The new subjectivity for men offers a masculinity dependant on a more negotiative relationship with a partner, even in such fundamental arenas as sexual privilege. Authority is displaced from control over women to control over property. It is not surprising that poor men often reject this identity, as the resistant conversation in the treatment groups reveals.

Within these general patterns, there is an important difference between those who are new to the law and those who have previous experience as the subjects of legal concern. Two of the men who were interviewed had long histories of court involvement for crimes dating back to their juvenile years. These men expressed none of the sense of outrage or humiliation of the other men; instead they appreciated the contributions of the program to their understanding of how to keep their partners. Some women, on the other hand, who have histories of involvement with the child protective services and thus have been in the position of receiving legal and social service scrutiny and control in order to get their children back, felt little of the sense of awe and scariness inherent in their new subjectivity in the law. They took a far more instrumental view toward what the law could do for them. Similarly, women who had toyed with this new subjectivity for some time and developed a more enduring commitment to it were more deliberate, strategic, and committed to legal remedies and more willing to press forward even when the law let them down.

39. R.W. CONNELL, *MASCULINITIES* (1995); see also MATTHEW C. GUTMANN, *THE MEANINGS OF MACHO: BEING A MAN IN MEXICO CITY* (1996); Matthew C. Gutmann, *The Ethnographic (G)ambit: Women and the Negotiation of Masculinity in Mexico City*, 24 *AMERICAN ETHNOLOGIST* 833–55 (1997); Matthew C. Gutmann, *Trafficking in Men: The Anthropology of Masculinity*, 26 *ANNUAL REV. ANTHROPOLOGY* 385–409 (1997); DAVID GILMORE, *MANHOOD IN THE MAKING: CULTURAL CONCEPTS OF MASCULINITY* (1990).

The adoption or rejection of new subjectivities is not only about the discursive construction of the self in relationship to others, however. Identities cannot be simply assumed and discarded like clothes, although like clothes they are subject to constraint in choice and in the resources available to acquire them. These identities are linked to institutional systems that locate individuals within productive relationships that allow them to acquire skills and secure jobs or deny them these opportunities. For example, batterers' economic marginality means that they cannot adopt the proffered resource-rich expression of masculinity in which power depends on economic providing rather than on violence. Gendered identities are also located within historically created and regionally specific class and ethnic structures. In Hilo, this includes colonialism and the plantation system. The cultural meanings of masculinity and femininity are pulled out of the matrix of opportunities and disabilities provided by these class and ethnic structures, including Native Hawaiian warrior symbolism, sexual prowess among groups which immigrated largely as single males, such as Filipinos, and hard drinking and risk-taking, often sources of masculine pride among whites. These are historically produced subject positions, shaped by larger institutional structures and adopted or discarded only within the constraints of wealth, color, and class. They provide repertoires of gendered subjectivities, and the law does as well.

A. Women and Subjectivity in the Law

Interviews with thirty women between 1991 and 1994 reveal their gradual adoption of a new rights subjectivity in the early years of the movement against domestic violence in this town. This was a time of intense activism by a feminist organization that created a shelter and batterer treatment program and support group, called Alternatives to Violence (ATV), and by a very supportive judiciary.⁴⁰ At the same time, the idea of intervening strongly in domestic violence incidents was new to the police and one that contradicted their previous practices. By 2000, police were more supportive of victims.

Four women who were interviewed reported fears and anxieties about turning to the courts for the first time, but found that at least some parts of it supported their new subjectivity. It is clear in these accounts that the role of the advocates and shelter workers from ATV is critically important, while the police tend to trivialize the problem. In 1992, Dora (a pseudonym)

40. See Sally Engle Merry, *Rights, Religion, and Community: Approaches to Violence Against Women in the Context of Globalization*, 35 *LAW & SOC'Y REV.* 1301-50 (2001).

turned to the courts for help after years of violence from her husband, the father of her young child. Her story is typical of battered women's experiences in that she hesitated for a long time to do something about an ongoing pattern of violence and then, when she finally did act, found the court scary and her partner's angry reaction terrifying. She even helped him escape legal penalties for his violence against her. In her interview, she said that she found the legal system powerful and supportive at some times and overly lenient and slow at others. She describes the violence in a document she wrote requesting compensation for her abuse as a crime victim:

Sam and I have been together for almost five years. There has been abuse on and off for the first few years. This past year has been the worst, it got to the point where he would beat me at least once a day and for about four weeks he beat me two or three times a day. It was so hard living with him. I have no family out here, only myself and our son. I lived in constant fear of Sam, never knowing of his coming here, afraid of what he was going to be like. Sam has threatened me with guns, spear guns, knife on one occasion. He would drag me down the hill by my hair, rip my clothes off of me, smash pans over my head. We had to replace or fix all but two doors in our house because he threw me through the other doors.

There was so much constant abuse it seemed like it would never end. Many times I thought that when I died it would be because my husband killed me. I was afraid to have him arrested because I knew he wouldn't stay in that long and I thought that he would kill me when he got out. Finally, on May 31, 1992, I couldn't deal with it. We were driving home from Hilo, my husband was sitting in the back of our truck. I was driving because Sam was too drunk. We were driving down the road and he reached through the back window and grabbed my face, scratching my face, then he tried to choke me and I felt that if he got open the door he would kill me. I looked over at my son in his car seat. He was frightened, screaming, crying and I knew I couldn't put up with this terror any more. I managed to drive away when he got out of the back to open my door. I just wanted the hell that my life had become to end. Since that time Sam has started ATV classes and is making much improvement. He knows that he needs to change to keep his family, and that abusing me is wrong. I feel that calling the police was the hardest, and best thing I ever did.

They had been together five years, married for three of them, and he had abused her most of the time. Dora explained his violence in terms of his cultural background, saying that in Samoa it is the man's responsibility to keep the woman in line. After this incident, Dora called the police to help her get her things and go to the shelter, but the police let him follow her alone into the bedroom, which frightened her. Then the police started "talking story" with him, discussing where to go fishing. They took him away, but only to his sister's house which was four houses away. Ten minutes later he was back. The next day he was still there and she called the police, discovering that she had a 24-hour restraining order against him.

This meant that he got arrested for violating the order of the court. Dora said that she always thought that if he were arrested, he would kill her, so his sister went down and posted bail. Using the law clearly represented a powerful challenge to him.

Dora got a no-contact restraining order against Sam, but he came to visit her at the house anyway. Two weeks after the incident they went together to family court, which required both of them to attend ATV. "It was scary going to court. I didn't know if they would send him to jail. But I was also glad because he had to go to classes now." Both attended meetings at the ATV program. She was pleased that the court required him to attend ATV because otherwise he would not have gone. Her mother had sent her a ticket from the mainland to come home, but she decided not to go.

By September, three months later, Dora said that things had gotten a lot better. He had not been violent to her since July. She has learned a lot more about his controlling actions towards her. Before it felt like she was in prison, forced to go places with his family who didn't like her because she was white, but now she is better able to gauge what is happening to him. Dora thought the family court judge was concerned about her safety, while the police were overly lenient, telling her that there was hardly a scratch on her and that they couldn't arrest him. Dora is in her early twenties, a mainland white woman from a middle class family with two years of college and an adequate family income. She said, "I had the stereotype that it doesn't happen to people like me with a house and education. I thought it just happened to welfare people." This was her first experience with bringing an abuse charge to court and she knew no one else who had done so.

Thus, turning to the legal system was scary and difficult for Dora, something she hesitated to do for a long time, yet when she did so, at least some of those she encountered took her and her problems seriously as rights claims. Although the police treated the problem as relatively unimportant, the combined effect of the stern family court judge and the feminist ATV program moved her toward a new position of seeing herself as a person who was battered and had rights not to put up with it.

Darlene went to the shelter after her husband Bill, whose story is described below, hit her when he was drunk.⁴¹ With the help of advocates at the shelter, she filed for a no-contact TRO which she later modified to a contact TRO while her husband was prosecuted for the charge of assault. This was the first time she had taken a violence problem to the courts, and she knew no one else who had. She found the law helpful and supportive but she got a "major reaction" from his family. They said to her, "but he only

41. She is a thirty-nine-year-old white woman with a high school education.

hit you once." In an intake form, she expressed some concern for him: "There is a really angry little boy inside of Bill. The boy does not come out too often. He is usually a good person and tries to stay that way, but he also feels violence can solve problems." Similarly, another woman who had experienced a series of abusive relationships said that these happened because the men were not happy with themselves. With reference to one, she said: "He didn't have a job, he didn't have nothing to do, he didn't have no friends, and the kinds of friends he did have that he finally did meet aren't the right kind."

Darlene was glad of the law. She said, "I'm anti-abuse, and I'm glad that the law has gotten involved. I wanted to give him a chance and let him know it's not going to happen again." Both Darlene and Bill were sent to ATV, Darlene to the support group, Bill to the violence control program. Although she felt the police officer was a "total jerk" and kept hassling her about the charges with no empathy or respect for what she was going through, she says she is glad she found a way to be backed up by the courts and to let Bill know he was wrong. (Bill's view, below, is that one of the police sided with him.) "I had to rely on my instincts through this whole thing." At the shelter she says she learned that there are laws now and places to go. The family court judge gave her husband a speech that she thought was quite helpful. Yet, she was disappointed by the criminal court and the jail experience. She thought jail should be a punishment and stigma, but for Bill it was like going to summer camp. He enjoyed it. He found others to collaborate with him in making himself look right. Through her participation in the courts and ATV, she now has a lot of awareness of power and control and understands that abuse is happening around the world and that women are starting to gain back their dignity. She would like to be involved with changing things, but she needs to take care of herself now.

Darlene is characteristic of many of the women we interviewed who were in the ATV support group. This was her first time in court and she had mixed experiences with the law. The police were not very supportive of her rights not to be battered and the jail failed to provide an atmosphere critical of male battering. She faced opposition from Bill's family and had no family of her own to support her. On the other hand, the family court judge gave a good lecture. The personnel of the shelter and the ATV program were very important in encouraging her and showing her how to use the system. Although she requested a contact TRO and moved back in with him, she has tried on the new self offered by the law: one which sets limits to violence and punishes those who violate these limits. Bill, however, resisted the new identity the law offered him as batterer. He found support for this resistance from his comrades in jail, the police, and his family's opposition to her actions.

Beatrice⁴² filed for a TRO against her husband Sam who had been abusing her emotionally and physically for thirteen years. His perspective is included below as Sam's story. She was also a relative newcomer to the law. Once she went to a police station with abuse charges against him, but she dropped the charges. In her version of the story, Sam went drinking and did not come home. She found him at his sister's, where he told her he was a hit man and had killed someone. Frightened, she took her children to the shelter to get a TRO. The day he was supposed to be served the TRO, he tried to commit suicide. At the hospital he told her it was a hoax, that he had never killed anyone but just wanted to see how she would react. At the court hearing, the judge mandated him to ATV, as she requested. But the initial no-contact TRO was converted to a contact order at the first hearing and then dropped at her request after six months. Sam strongly resisted Beatrice's move into the legal arena, threatening to commit suicide. She persisted out of fear for her children's safety. She had never gone to court before and knew no one else who had, but she appreciated the court's willingness to condemn his violence. The court was scary: "It was my first time, I didn't know what to say. I also felt relieved because these things were mandated. I know he would not have come on his own." Beatrice says Sam has learned a lot at ATV. Yet under pressure from him she backed away from legal remedies.

Jane had a far more rights-supportive experience with the police than many other women at this time. When Jane's boyfriend of seven years started pushing her and smashing her into the garage wall, she called his friend who called the police. In front of the police, her boyfriend denied the blows, but she said she wanted to charge him with everything and the police took him away. The next day she went to the shelter and got a no-contact TRO. When he appeared at her house to pick up some things, the police came and told him that he could not stay because of the TRO. This was Jane's first time in court with a violence charge. In family court she asked for a contact TRO and to have him receive counseling and ATV. The judge sent them both to ATV and extended the no-contact order for two weeks but later, at her request, changed it to a contact order. She said the court was scary. "Really scary. I think it was more scary than being beat up." But ATV has really helped her boyfriend to break down his pattern of violence and helped him to identify his "emotional being." "He's changed so much, much more for the better." She was very pleased with the concern the police expressed to her, the information and help they provided, and their resistance to accepting his story.

42. She is a thirty-three-year-old Japanese-American woman married with three children, an eleventh grade education, and a life-long Hilo resident currently supported by welfare.

All four of these women tried the court for the first time and found some strength in its support although they also found the experience mixed and the assertiveness it required frightening. The actions of the particular police and judges they encountered profoundly affected how each felt about the law and their willingness to follow through. Each of these women also backed away from the legal process at some point, usually because they got what they needed and the pressure on them from their partners and their families to give in was great. Each had, in a sense, tried on this new self, made some headway, then retreated, but with some change in their sense of personhood.

Other women interviewed told similar stories of the scariness of the court and the support offered by the law. Judy was threatened with a gun by her husband who she had dated since 6th grade. He had been abusive since she was 17. He had demanded sex from her and she refused. Although a staff member helped her write a TRO, "I was scared, I doubted myself, I was talking to God." Her husband was also scared because he already had charges. "I didn't want to punish him, just set him straight." The judge ordered counseling and ATV for both of them, but he didn't like it—he didn't want to be controlled. She says, "I felt weird being in court. Who would have ever dreamed of being in the courtroom doing this with someone I love?" But things had changed. She remembers that in 1979 when her mother called the police several times they were "real COLD, not compassionate." Now the family court judge was cold but fair. Her husband was not arrested but was already on five year's probation for sexual assault and has served one month in prison. She still loves him, although not as a spouse should. But she sees her children sad and asking for their father. Thus, she is caught between protecting herself and denying her children access to their father, another kind of pressure on her to drop legal sanctions. Both were mandated to ATV, first with a no-contact TRO and subsequently a contact TRO.

Jane is a thirty-three-year-old white woman from the mainland with two children who works as a chef and gets child support and welfare. She had no previous court experience when her partner assaulted her and smashed her furniture. The police persuaded her not to press charges and had her sign a paper to that effect. Even though he hit her, she was reluctant to file for a TRO because she thought the courts did not favor women. Police think she's the "crazy one." She has felt embarrassed and degraded by the police attitude in this and previous abusive relationships. Such humiliating experiences clearly deter a woman from calling the police again. However, when she went for a TRO, the judge had a great impact on her partner. When her husband complained that she was not being nice to him, the judge cut him off, saying "Did you punch her in the head?" He had to say, "Yes I did." In court she "found out she has rights." It seemed that he went through a big

shift in his attitudes. However, she noticed that it was the judge he respected, not her. After the court hearing Jane was surprised to find she felt like a citizen for the first time and that someone really cared. Her husband had eroded her self-esteem but she says now she feels empowered. This experience has changed her life; now she sees how violence permeates society. Jane's advice to women is, "Have self-love. A lot of us don't go through with it because the man might get angry. The woman should believe she shouldn't be hit no matter what. Sometimes the women think they deserve it." Jane has clearly reformulated her battering experience as larger than her own relationship and as a site for the creation of the rights-bearing subject. Despite her bad experience with police, she felt that the court cared about her problems and she learned she had rights. Several other women also described feeling stronger and more empowered after their encounters with the courts and ATV.⁴³

Women with extensive experience in court respond very differently to the new subjectivity it offers. If they have been through a series of encounters with the law, they have built up a rights subjectivity through experience. Those who have left their partners typically feel less frightened by the legal process and are less afraid of the effects of their actions on their partners. A thirty-year-old mother of four who has spent at least four years in and out of court with charges of abuse against her and her children is now separated from her husband and getting divorced. She said that she is more relaxed now. She is not in an abusive situation "and I have the court to back me up now." Some of the police were good, she said, but some knew him and were not helpful. The shelter taught her that she was a person who had feelings and did not have to be his servant and jump when he said jump.

43. A twenty-eight-year-old Japanese woman born and raised in Hawai'i says, after she got a TRO, that she felt stronger and more informed. She first asked for a contact order and then shifted to a no-contact. She was down on herself and believed the bad things he said about her. Now she feels happy and confident. "I don't need a man." Her advice to women is to get a TRO the first time. "Go on intuition so you can see how it is." Again, she emphasizes that moving into the legal arena is hard, scary, and uncertain. One woman was helped to fill out forms by a shelter advocate and said that it is "Giving me courage." A twenty-nine-year-old Hawaiian/Chinese/Caucasian married mother of two with a little college, a native of Hilo, found the court scary because "she didn't know what to expect after that." Her husband Keo (see below) was furious. A thirty-eight-year-old Mexican housewife on welfare said that the ATV classes "have helped me to be strong." She felt that she had more power and control inside herself to control the anger and the outbursts so that hopefully the police won't have to come. She said "I was shame. I don't want the cops to come anymore. The same cop keeps coming over and over calling you by name already." Her husband threatened to give their children "dirty lickins" if they called the police. A twenty-five-year-old single Portuguese/Puerto Rican mother of three living at home on welfare said that she had never gone to court before, and it was scary: "I felt weird telling the judge that I still wanted contact even though I was still getting lickins."

She mostly learned that she "did not have to put up with his shit." The court was effective because "it shook up his ass." She thought that for her the court was fair because she knows how to dress, look presentable, speak clearly, and she understands how the legal system works. She has mastered the ATV program's perspective through years of experience with abuse and in ATV. She uses the feminist language of ATV to describe her experiences: "In the past . . . it has mostly been emotional abuse, threatening to leave me, to send me back to my mom. He used male privilege and said I had to do all the work in the house. He tried to keep me isolated by not letting me use the car. He used economic abuse by saying I couldn't/shouldn't get a job so that I became dependent on his income alone." She has had three supportive judges and the encouragement of ATV has increased her willingness to turn to the courts and helped her to adopt a rights consciousness.

Among the thirty women interviewed, twelve were in court for the first time. Five of these women mentioned without prompting that the experience was scary, one that it was very tense, and several that it was in various ways stressful. Only two first-timers suggested that they were not scared. Those with more experience never said that the court was scary but instead described annoyance, frustration, anger, and support. For example, a thirty-five-year-old Hawaiian/Chinese woman said that when she dropped her TRO, the judge told her that if she needed it again, he would be there. Yet the same woman recognized that members of the legal system were disappointed and that they did not understand the emotional side of why women drop TROs and get back together with their batterers.

Facilitators of the women's support groups at the ATV program emphasize rights and the importance of using the courts. My research assistants and I observed at least forty women's support groups between 1991 and 2000. The facilitators commonly provide information and advice about how to file TROs, what will happen in court, and how important it is to use the courts. Even though facilitators emphasize rights, the women are more likely to talk in terms of empowerment, courage, and surviving. Some claim they are learning to stand up for their rights but more describe themselves as survivors. By 2000, many more described positive experiences with police than had in the early 1990s. One talked about a police officer who called her regularly for days afterwards to check on her safety. In 2000, a police officer in a special domestic violence unit acknowledged that the police often fail to intervene strongly in battering situations for several reasons: they know the man, they are trying to avoid the paperwork of an arrest, they do not take the problem seriously, or their supervisor does not care. In contrast to the police, most of the judges in town viewed battering as a serious problem throughout the 1990s. For about five years during the 1990s, the prosecutor's office had a special domestic violence unit with a

prosecutor who cared about these problems, but in the late 1990s attention was shifting to other areas such as child abuse.

Clearly, the engagement in the legal system, including the act of initiating that engagement, changes the way women feel about themselves. For many using the courts for the first time, this is a scary endeavor requiring courage but provides the comforting realization that members of the legal system care. This realization is tempered by experience, however, particularly with the ambivalence of the police, the protracted criminal court process with its plea-bargained outcomes, and the man's occasional escape from ATV despite mandated participation. The program talks about rights, but the women talk about finding themselves, about following their intuitions, about having courage, and about surviving. Advocates at the shelter and at ATV, who also go to court with the women, are critically important supporters for the kinds of transformations the women experience. Victims constantly describe the support they receive from these advocates, most of whom are previously battered women. They provide support as advocates in both criminal court and family court, as people who help them file TRO petitions, and as facilitators of support groups. They help the victims try on this new identity to see how it feels. This is clearly an iterative process, tried over and over in front of different audiences, only some of which are sympathetic and supportive. There are some women who take it on with intensity and commitment, sometimes working for a program such as ATV or pursuing men through whatever legal channels they can, while others get discouraged and back away.

Women caught up in the child protective services (CPS) system express a different kind of subjectivity, one closer to what the men feel; they are now subject to surveillance and questioning about a fundamental feature of their own gender identity: their capacity to raise children. Just as the CPS workers' critique of their parenting and the removal of children from their homes strike at the heart of their identities as mothers, so women's refusal to play the submissive wife assaults men's identities as husbands. Several of the women we interviewed described long, painful efforts to get their children back through attendance at parenting classes, drug-treatment programs, and anger management classes.

There is a class dimension to the new self offered through the law. Such a person is less dependent on a man, but also capable of a more orderly life, a new family form, a house, garage and a big dog. Several women said they felt shamed or humiliated by the police intervention into their families and looked for the day when they wouldn't need to call the police any more. Similarly, men found the intervention of the law against them as batterers a degrading experience. Yet this seemed less humiliating to those men with extensive experience in the legal system.

Despite their gradual adoption of a new subjectivity, women commonly

felt dissatisfied with the effectiveness of the system itself. They complained about the lack of jail time for perpetrators, the slowness of the criminal court, and the mixed response of the police, particularly when they knew the defendant. Most have maintained their relationships with their partners and have young children, so they are torn between protecting their children from the man's violence and trying to maintain the connection between the children and their father. Yet, the need to protect children seems an important reason for turning to the law, allowing the woman to take on the subjectivity of protective mother rather than non-submissive wife. Finally, it is quite striking that virtually all of the women report long histories of abuse dating from the beginnings of the relationship with their abusers, so that their mobilization of law is a response to a history of difficulties.

There is little sense that distinctive cultural patterns justify violence among the ethnic groups in Hilo in these women's stories, although some use ethnic factors to explain its source. Men typically defend their violence as justified by the woman's sexual activities or her failure to care for their children, but more often they simply deny that the blow was significant. It appears that money problems frequently trigger the fights. Both the women and the men who attend ATV have very low incomes and limited education.⁴⁴ Many are on welfare or working only intermittently. In sum, legal intervention offers a new subjectivity to women that requires asserting rights. Such assertions are scary and risk disrupting important relationships

44. Program intake forms for 1574 people served between 1990 and 1998, two-thirds men and one-third women, provide demographic data on who is referred. About three-quarters of the men (77 percent) and women (70 percent) earned under \$11,000. Over half earned under \$8000 a year, a low income even in a place where housing costs for substandard housing are low and hunting and fishing routinely supplement incomes. Only 6 percent earned above \$25,000 a year. In contrast, the 1990 Census found that only 19 percent of the town's residents earned under \$10,000 in household income while 53 percent earned over \$25,000, an income level reached by only 4 percent of the ATV women participants. Men and women in the men's violence control program and women's support groups frequently talked about welfare, survival by fishing, hunting, and odd construction jobs, and the pressures of poverty. Their discussions suggested that many did not have steady jobs. These clients are also substantially less educated than town residents, with the men even less educated than the women. Half are high school graduates (46 percent) and one quarter started college (25 percent), but only 3 percent have a college degree. In contrast, 29 percent of Hilo's population has an associate's, bachelor's, or higher degree, while only 5 percent of the ATV population does. Thus, the men sent to the violence control program as well as the women they batter are significantly poorer and less educated than the town overall. Many are on welfare or living with partners who are; many camp in forests or beaches; many are embittered by a colonial past and present poverty; many suffer from emotional scars of childhood physical and sexual abuse. Two thirds of both the male and female participants in the feminist program said that they had either witnessed or experienced violence as children. Almost half the men in the feminist batterer program have been arrested for something in addition to battering.

with partners and kin. Women's willingness to take the risk depends on the extent to which ATV and shelter staff, police, judges and prosecutors, as well as their own friends and family, support them.

B. Men and New Subjectivities in the Law

The male experience in this situation is predominantly one of betrayal. Overall, men express anger, humiliation, and dismay. They describe feeling that no one is listening to them and that the court is on the woman's side. Some complain that the criminal court drags on and hangs over their heads. A few say that they have been treating their wives this way for many years, and cannot understand why their wives are now objecting. Many claim that their behavior is not so serious. Those whose partners recant find deep comfort in their change of heart, seeing them as an ally in their now mutual opposition to the legal system. None defend the right to batter their wives, but many argue that the penalty is too severe, the program too long, the offense not so serious, or their violence less than that of others. Some complain that they did not know about the length or cost of the ATV program when they agreed to plead guilty and attend ATV in order to avoid jail.

For those for whom this is the first encounter with legal scrutiny, this is a humiliating and degrading experience. The identity of the batterer as it is defined within legal discourse is energetically resisted. Most find ways of rejecting or refusing this new subjectivity by blaming their partners or by observing that such things happened in their own families when they were children and elicited no public reaction. Many said that their violence was not serious like that of other men. One man insisted "I don't batter nobody." He acknowledged slapping his partner on the side of the head, but not punching her in the mouth. A Native Hawaiian claimed that the courts were not relevant to him because he was governed under native rights and the Hawai'i courts did not exercise control over him.

For those men with more extensive experience in the law, the edge of anger and outrage is muted. Some emphasize the contribution the ATV program has made in helping them keep in touch with wives and children. Many commented positively about ATV, although this must be assessed against the method of obtaining interviews and the participants' assumptions of connections between the research and the program. Thus, these statements may be biased since only those at least somewhat positive toward the program may have agreed to be interviewed.

Men often describe their experiences in court, particularly those for whom this was a new experience, as frightening and infuriating. Joe, a thirty-six-year-old Hawaiian/Chinese man who had a TRO issued against

him, and then was referred to ATV, and subsequently appeared in Family Court for the full hearing on the TRO application, was very angry, his wife said, because he had hoped his wife would drop the TRO. But she did not. The ATV advocates had encouraged her not to drop it. She describes the waiting as a tense hour and a half. In his interview, he said it was a very tense three hours. He says she had an attorney; she says she was accompanied by an ATV advocate. Although Joe had previous troubles in court, he described these as only "small mischief"—drinking, fights—apparently fairly acceptable offenses. At this Family Court hearing, however, he felt very alone. He felt that he received little advice in advance. He had not seen his wife since the incident. He felt hurt and awkward because of all the other people waiting outside the court, including some he recognized from the ATV classes. He sat by himself while his wife sat and waited with her attorney (probably an ATV advocate). No one told him what was going to happen, and he had no idea of his rights. The process seemed very impersonal, he said: the woman has all the support and the resources and the man is left alone.

However, he found the judge calm and understanding and listened when the judge said he needed to change his violent behavior. In ATV, Joe has learned to distinguish between anger and violence. He feels he now understands himself better and can use this knowledge in other relationships and to better himself. As he put it, the experience with the law led him to "a pot of gold," consisting of ATV, his desire to change, and the support of his wife. He says that he obeyed the TRO because his wife and children believed in him, not because he was afraid of the courts.

Bill, discussed above as Darlene's husband, said that he was only defending his wife against her co-workers at a party when he landed in both Family Court and District Court. He was very "pissed off" when he found out that she had requested a no-contact TRO. "I felt like she was being brainwashed and that our relationship was not important to her." The judge sent him to ATV and told him the penalty for failure to attend was a "messed-up relationship." The criminal court sentenced him to ten days in jail, of which eight were suspended and two served. Darlene said he did not seem to find jail stressful. As a result of his experiences, including ATV, he says that they communicate "way better." He has learned, he says, that just because you are married this does not mean that you should take anything for granted, nor that your wife should stay home and cook. Bill is thirty-two, a high school graduate who works as a carpenter and is of Hawaiian/Chinese/Portuguese/Irish ancestry.

A thirty-five-year-old Hawaiian/Chinese man, Keo, had a fight with his wife that led him to move out onto the beach. When she filed for a TRO, he was furious: it was the first time he had a TRO issued against him "and I never did nothing, I mean, we fight but it's my right; she's my wife. I never

hit her, ever, that's rare, you know, for one Hawaiian." He felt the judge, who he described as Japanese, never listened to him but cut him off all the time. He kept explaining that he was not violent and should not be there. His wife had an elderly haole lawyer who kept giving him "stink eye." Although sentenced to attend ATV in June, as of September he had still not started and insisted that he did not have a problem with violence. According to his wife, this man grew up in an abusive home and spent several years in both juvenile and adult prison, as well as some years living on the streets as a teenager. He did not finish high school and is currently spending his time caring for his children.

Sam, the husband of Beatrice, tells the story of their conflict somewhat differently than she does. He says that he drank, had a fight with his wife, told her a story about killing someone, and when she failed to return home, took pills to commit suicide. When he woke up in the hospital, she came home and changed the no-contact TRO to a contact TRO. He was "pissed" that she had applied for a TRO and found the experience in court "kind of shocking." It was his first time, and he just had to listen. He was sent to ATV, which he now thinks was fair, but at the time he did not think he had done anything wrong. He has learned a lot in ATV and now thinks they can communicate better with less yelling and screaming. He says he is almost finished ATV and is scared to leave the program because he can share things with the guys that would make his wife angry if he talked to her about them. Sam is thirty-three, a high school graduate of Japanese/Chinese/Hawaiian/Caucasian ancestry who is on welfare. He is an unemployed laborer who has spent his life in Hilo. Like many of the other men interviewed, Sam has little or no income and a habit of drinking and drug consumption. Here, it appears that he used his suicide attempt as a way to force Beatrice to stay with him.

Some men had different reactions to the court. A forty-three-year-old Hawaiian/Chinese man with no income said he was glad when his girlfriend took out a TRO on him and charged him with abuse because she was fooling around and he wanted her to leave. He was afraid of the woman judge and went to ATV as mandated. Here he felt that they were too negative: as he put it, if you tell a person over and over that they are stupid, they will be stupid. He resisted attending: although the incident and referral took place in November, by February he had missed enough sessions to have his case referred back to the court by the ATV program. The court held a hearing in March, imposed a 90-day suspended sentence, and sent him back to ATV. By July, he had completed only half the ATV program.

George, a forty-nine-year-old man of Puerto Rican ancestry, had a fight with his teenaged children and his wife. In his account of the fight at the ATV intake, he said that at the beginning, he yelled at his daughter "You've got no respect for me." He was angry and refused to plead guilty, so the case

went to trial. He was sentenced to two days in jail and ATV. George did not think the jail served any purpose nor did he learn anything. When he was growing up, things were different: "If it was back then, my parents would be in jail." But, he concludes, whatever they did when he was young, he deserved it. When he began attending ATV he was very hostile and thought his wife deserved the violence, but now he does not think so. He grew up in Hilo and works in a maintenance job and, like several of the other men interviewed, has a drinking problem.

Outrage and dismay are common responses to women's mobilization of the law. For example, Rod says he hit his wife Judy, described above, on and off for ten years because he didn't know how to express feelings and didn't know how to deal with stress. He said that whenever he got frustrated he would look for another woman. Police interviewed him under a sexual assault complaint five years ago, but he thinks that the woman he picked up was a prostitute. He would fight with Judy because when she refused sex with him, he would go out, presumably seeking sex from other women. She said if you go, that is the end of the marriage. But when she filed for a TRO and he received it from his probation officer, "I was stunned, I was shocked, couldn't believe she would do that." When they went to court he was angry, hated the police, the advocates with his wife, the judge, and the bailiff. He felt like he was being manipulated and judged and felt it was unjust, that he shouldn't have been there, "like my rights were being violated." According to the interviewer, he said "I felt like a piece of meat in the court. There's no emotions there. The feeling is that you're not human. Nobody cares about you there. It's just black and white. I felt like a reject from society." He thinks that in the eyes of the court, women are classified as the "weaker vessel" and men are the brutes. His previous sexual assault case had prepared him for this experience with the court. Rod did not think the requirement to attend ATV was fair because he was forced to do it against his wishes. But he has now learned that his wife wanted a divorce and he has to think about paying child support. In contrast to other men, he does not talk about learning about relationships and himself, although he does say that ATV taught him about his anger and how to express his feelings. One intriguing observation is that he found the program very gentle. He expected it to be run "by all these militaristic women: but it wasn't like that."

In this interview, Rod clearly expresses a loss of autonomy and rights in the vivid metaphor of feeling like a piece of meat. His sense of identity assault is dual, initiated first by his arrest for predatory sexuality, then for violence, but he has found ways of resisting both identities in his sense of anger and outrage and the violation of his rights. Rod is not as poor as many of the men interviewed, and unlike them holds a job with some skill. He works as an accountant and in conjunction with Judy's work makes a family

wage. He has a high school diploma and one year of college and is thirty-two years old.

Instead of surprise and outrage, John talks about shame. In a family battle, his wife got "battered a little" but he didn't think she would go through with it. He "kind of felt ashamed" for being in court, for having all these people involved in his life. He said he was "a bit humiliated. I was resistant at first." As he became involved with the child protective services, he said that he recognized that he was up against people in power and did not try to "buck it." He experienced a loss of masculinity by the intrusion of state/social services into his family. As a forty-two-year-old white male from the mainland who works as a carpenter, he has a relatively large income for this group. His interpretation of violence is that it's "really bad in Hawai'i—that macho thing, the 'warrior trip.' It's ego and pride." In his view, if the court puts you on probation, it's like a watchdog on you. In another intriguing reference to the power of the professional arena of law, he says that it would be good to simplify legal jargon. "The language is above everyone." Thus, he points to embedded class power in the language of the law. The experience of intrusion, powerlessness, and subjection to the language of an elite class reinforces his sense of class vulnerability.

Similarly, Clay was angry when the TRO arrived, although this was his third encounter with TROs. When I asked what he learned in ATV, he responded, "Don't do it again. I served time already. Eight months too long." Has he learned anything new at ATV? "Some stuffs. They don't listen. They have their own set theory." He says he really did not do anything, only talked mean, and there is no proof. He is angry. The courts are not fair because they don't listen to him. "They only hear one side. Try to say something, brush you off." The court is one-sided: "They think only of the girls." Clay has been in and out of juvenile court for many years and is currently twenty-eight, married, and although a carpenter, is not working, but surviving by hunting.

Fred, in court for the first time, claims his violence was only a few backhands. He feels unfairly treated. The police didn't want to arrest him, he says, and his wife filed charges because she didn't know much about the system. Then she wanted to drop the charges, but couldn't and regretted that he was charged. She thought the case would be dropped, but even though her paper was filed to drop the charge, it was not. The case is not settled yet and he has been going to ATV for six and a half months. Now he knows nobody deserves to be beaten up. He promises it will not happen again, that he would just walk out. They are still together and things are now better for him since he can cool his temper down. He had to get his own lawyer for \$400 since he did not qualify for a public defender. He thinks that in the Family Court the man is always wrong, already guilty, but he thinks this is right. But in the criminal court there were all kind of cases and

he wondered, "What am I doing here?" Criminal court was fair because he was not arrested, finger printed or photographed and there was no bail. Thus, the criminal court's apparent leniency confirmed his view that this was not so serious. But Fred also complained that the criminal court was confusing, that there were a lot of new words. He emphasized that he came from a "good family" with "church connections" and the police knew him and his family. He just got a little intoxicated, and his wife told the police not to arrest him.

Thus, he recuperates a masculine and respectable sense of self by emphasizing his wife's lack of desire to pursue the charges and his insistence that he does not belong in criminal court. The leniency of the court and the police are interpreted as tolerance for his behavior, minimized as trivial and undeserving of punishment and done while he was "a little intoxicated." Notice that he does not argue that his violence was acceptable or admirable, only that it was trivial and excusable. Fred is 25, white, and a long-term Hawai'i resident who speaks pidgin. He is married with two children and, like so many of the men interviewed, works in a variety of relatively low-paid jobs including bartender and security guard.

Bob claims he is a pacifist who served in Vietnam in 1968 and is furious that he was persuaded to plead guilty to an abuse charge and has been sent to ATV for eight months. Two days after the arrest, his wife said she would drop the charges, but it was too late. He was really "pissed" because he knew she attacked him. The ATV homework makes him sick because he doesn't batter. "I get uptight having to think of myself as the kind of person who batters women." This is his third wife, and he is angry that the second left him and took the house he built. He voices a common complaint that he is not like the other men in the program, and that there should be different kinds of counseling for different kinds of people. For the average person, he thinks, it would be fair to send them to ATV for 2 months, then reevaluate; only repeat offenders should have to go all eight months. And not everyone should be sent to one program where all are treated like the "worst guys." As he approaches 44, he says he is turning harder in his heart and having trouble trusting women. He came from a working-class blue-collar family on the mainland but has lived most of his adult life in Hawai'i. He is a carpenter who works on and off. Bob resists taking on the legally constituted subjectivity as batterer, even admitting that it makes him "uptight." As women adopt their new subjectivity with both trepidation and eagerness, men resist this self with anger, shame, and denial.

A twenty-three-year-old Portuguese man complained that he feels as if he is behind bars at ATV and thinks that the courts treat all the men as if they are the same. His partner does not know how to stop when she gets angry, but the court never listened to his side of the story. Another man, despite six previous visits to court, thought his partner's charge of abuse was not

necessary. He was "shocked. Never thought I would get arrested. Not the type. I've heard about domestic violence—didn't think it would be me. I went to the police station, posted \$250 bail, went to Mom's." In court he was not frightened, but confused. The public defender did not talk to him. He has learned from court that "Violence is a crime." Before, he didn't think that what he did was a crime. At 29, this man is unmarried but the father of two children, a lifelong Hilo resident, Filipino/Japanese in ancestry, and a draftsman but currently unemployed. He is eager to deny that he is the "kind of person who does this."

Kalae, a thirty-three-year-old almost full Hawaiian man arrested on an abuse charge, expresses most vividly the sense of humiliation in the legal process. Because he was unable to make bail, he spent the night in jail and arrived in court in chains wearing an orange jump suit along with all the other arrested people. He said he looked like a criminal and was automatically looked down on as a criminal. It was the first time he had been arrested like that. He also emphasizes that this is a new world: he and his wife used to fight when they were younger, but he was never arrested before. "It was your pilikia [trouble]—no one called the police if you raised your voice." In those days, when they were 16 or so, people just ignored fights like that. [This is the beginning of the same fifteen-year time span mentioned by others.] But now, he says, times have changed and the laws have changed. "They treated me like a criminal. I didn't think it was that serious. I did slap her." He takes comfort in her resistance to the law. Although he was required to stay away from her for eight weeks, he only stayed one week. His wife and he both wanted him home. His wife had to come forward and request it, but then the judge canceled the restraining order. He is needed at home because he has children. He complained that the system is unfair and the judge is like God. "She didn't listen to me when I said I have children. Eight weeks is too long. It was like my word didn't matter. Made it like it was the only thing I do. In an orange suit, I was very ashamed; I was a criminal." Clearly the prison uniform added to his sense of degradation and humiliation, to which he responded by asserting the identity of responsible father to his children. In Family Court he thought the judge was rude and took for granted that it was all his fault no matter what he said. "She mentioned I drink beer; I don't think its a problem. So what's wrong with my having a few beers?"

There is in these legal arenas a struggle for identity, for defining who one is within this powerful discursive space. And in this space, men experience not being heard and losing voice. This is an experience more common for women. The men are in a sense feminized in the process, moved into the cultural space typically defined as appropriate for women.

But, as men deal with this feminization, they turn to their wives as allies in combating it. In Kalae's case, his wife joined with him in resisting the law,

thus restoring some of his masculinity. They were both sneaking to be together. She was protecting him from the law. She was also afraid of the system and of getting arrested. "They have everybody scared. I'm not afraid. I know how they work. I'm not afraid of what they put on paper." He portrays himself again as courageous in juxtaposition to a timid fearful wife, taking risks to restore himself to his rightful place in the home. He uses one further strategy to recuperate a masculine self by appealing to his Native Hawaiian identity. He says he does not have to obey the court because he is Hawaiian and falls under "native rights." He belongs to an important Hawaiian sovereignty organization and comes from a people who were warriors a century ago. He notes that there are many differences between Hawaiian and British/English ways of doing things, and that there are many reasons for Native Hawaiians to be angry about past treatment by the US. He grew up learning from his grandparents how the US took Hawaiian lands and sovereignty and realizes that wrongs have happened to his people and that the government is not good. He connects this history to the fact that "most of my people are in jail." He observes that 90 percent of prison inmates are Hawaiians. "A lot of Hawaiians are in jail because they are angry at the government and the foreigners for the way they are living now." Thus, along with many other Native Hawaiians, he expresses the anger of Native Hawaiian people, now largely poor and politically marginalized, and invokes the historic takeover of Hawai'i as a way of diminishing the authority of the current legal system over him. He emphasizes its alien roots. He traces his own ancestry to the Hawaiian chiefs and their warrior traditions, and his present poverty to the state's seizure of his lands. The sovereignty movement has exposed some of this history and given him more knowledge and grounds for protest.

Thus, Kalae both shares other men's experiences in the legal system and asserts a different kind of masculine identity rooted in Hawaiian tradition. He undermines the authority of the law through a critique of the law in the context of the history of American colonialism in the islands. His wife apparently shares some ambivalence in deploying this alien legality against him, and is persuaded to subvert it and rejoin him despite the episode of violence. It is clear that there are multiple identities at play here in addition to those defined by gender. It is through such skirmishes with the legal system that new subjectivities emerge, but such identities are obviously gendered, raced, and classed as well. Such constructions depend not only on the texts of the laws, but also on men's interpretation of the relevance of the law to their lives. This depends both on how the legal system treats them and on their historic and cultural relationship to its authority.

In contrast to these angry, surprised, and entitled men, Peter, a Samoan man born in Hawai'i who has been in court and attended ATV before, says he knows that his present violence is wrong. He is worried that he will lose his children. The police told him to control his temper, leave his wife alone,

and get counseling. He is now doing so with his pastor. He talks more to his wife about doing household things and is trying to lead a normal life and build trust. ATV made him look at power and control strategies, which he was not aware of using with his wife. He thinks it is good that the court stops the problem in its early stages and was relieved that "at least it did not appear in newspaper." Men arrested for abusing their spouses are listed by name in the local newspaper. Even though the judge was on the wife's side and treated him like he was nothing, he thought the judge was fair. Peter expresses a desire for "normalcy" in the cultural terms of the ATV program and does not express the same resentment against legal intrusion as many of the other men interviewed. Instead, he sees court and ATV as a way to achieve social class mobility with the help of the law.

But the number of men who enter willingly into the subjectivity offered to them by this regime of scrutiny and correction is very small. Anger is a far more common response. Out of the twenty-one men interviewed, twenty were defendants and one was a plaintiff. Sixteen of the twenty defendants said they were angry, while three of the four who said they were not angry had previous court experience.⁴⁵ Virtually all were seeking ways of reframing their experiences to diminish the extent to which they were defined as criminals. Most were humiliated and degraded by their court treatment and took comfort in their wives' resistance and in signs that the legal system was not taking their offense seriously. Yet, of the twenty referred to ATV, only four denied that they had learned helpful new things and only one failed to attend. As I said in the beginning of the article, however, it is possible that this positive assessment is skewed by the fact that interviewees were people who volunteered to talk to a person perceived as having some connection to the program. On the other hand, several of the interviewees did complain about ATV, despite the fact that they were approached for interviews by researchers in the ATV offices. Interviewers did stress that this project was not connected to the ATV program.

The new identity offered to batterers by the law is not only one of legal subjugation; it is also one of lower social class status. Men developed a variety of ways of distancing themselves from this status, either by claiming that they did not belong in the program, they came from good families, they were Native Hawaiians and part of a warrior tradition confronting an alien and illegitimate law, they were following common cultural practices in Hawai'i with its "macho thing," or that they were acting in accustomed ways acceptable in the past. Men of more subordinate class status tended to find this aspect of the legal encounter less infuriating than those with higher aspirations.

It is notable, however, that within this ethnically diverse population

45. Eleven of the twenty defendants had previous experience in court.

ranging in age from their twenties to their forties, a dominant characteristic is economic marginality. A few have steady jobs but only moderate incomes, but the majority is unemployed, on welfare, or occupying marginal and transitory jobs. Indeed, one of the interviewees observed that stress at work leads to violence at home. As Connell points out in his study of masculinities in Australia, men unable to perform the core task of breadwinning face great difficulties in constructing a masculine identity and frequently adopt violent patterns of behavior. In Connell's study as in this one, prestige accrues to success in fights with peers and in responding to provocation, but there is little pride in hitting women, although it happens frequently.⁴⁶ Most of the men we interviewed in Hilo were not proud of their violence against women, although some justified it by her provocative behavior or "fooling around." Instead, as they struggled to build a fragile masculinity unsupported by the core functions of breadwinning and sometimes even marriage, they searched for glimmerings within the legal system that this was not really such a serious offense, that the police or judges really did not care, and that the system was designed for people different from themselves. This was not an assertion of the right to batter but a resistance to the new criminalized identity the law was constructing for behavior that had in the past been normalized.

IV. CONCLUSIONS

For men, the law offers a new identity as a batterer, with a loss of class status and self-respect along with humiliating appearances before the police, the judge, and the ATV program, settings in which a man is either refused the opportunity to speak or not heard if he does. His wife or partner is ultimately the source of this humiliation; it is she who holds the key to supporting and even constructing his masculinity. It is then a great source of solace if she tries to undermine the process, drop the charges, change the TRO from a no-contact to a contact order, or even sneak visits with him despite the legal prohibition. Her return to the more feminine, submissive role seems to provide solace, to mitigate the pain of a damaged masculinity.

There is an important class interpretation to these encounters with the law as well. The intervention of the law into the inner workings of the family—the police at the door, the judge reading the description of the blows—is generally experienced as a humiliating experience, even by women. This opening of the family appears to be both a sign of a subordinate social status and, in many ways, an effect of that status. A lack

46. See CONNELL, *supra* note 39, at 99–100.

of resources renders families open to a variety of legal interventions from welfare supervision to child protective investigations. The closing off of family relationships from such legal scrutiny is both a mark and an effect of higher social status.

Men resist the new masculinities constructed within law by joking and sexual innuendo in the meetings, by failing to appear for court and ATV meetings, by denying the construction of their violence as inappropriate battering, and by pressuring their partners to withdraw charges. The joking, back talk to the facilitators, and talk about sex in the group meetings asserts a different kind of masculinity, a kind of potency and power that escapes the new model of masculinity defined within the parameters of the law and the feminist program, both of which are based on an elite, white identity which appears feminized in contrast to that which they have adopted.⁴⁷

Although these subjectivities are open to some negotiation and choice, it is a negotiation clearly constrained by a wide range of institutional factors, such as the legal system's sympathy for battered women and the resources available to men to live a more middle-class, contained life outside the scrutiny of the law. It seems clear that the inability of many of these men to perform the breadwinner or father tasks impinges on their own sense of masculinity and their ability to assert control over their wives. At the same time, women seeking help acquire a more autonomous subjectivity defined by rights, but also one which denigrates their own feminine identities as wives and subjects them to the kinds of intrusions characteristic of lower class lives. It is not surprising that their entrance into this subject position is ambivalent, hesitant, and intermittent.

Women's greater willingness to use the law to deal with gender violence is a response to a powerful feminist movement to redefine the meaning of battering from an inevitable feature of everyday life—an inescapable risk—to a domain of behavior subject to prevention and change. But it is also a response to the law's greater willingness to treat complainants with respect and to take their problems seriously. A more complex set of penalties for batterers has developed both within and outside the law. Of particular importance is the development of new forms of governance that focus on self-management and a redefinition of masculinity. These interventions represent a dramatic shift away from earlier ideas of deterrence through punishment. Instead of changing behavior by imposing punishment, the law now channels offenders into group environments in which their use of violence in work as well as family settings and their ideas about gender relationships come under scrutiny and critique. New images of egalitarian gender relations based on negotiation and responsibility for

47. See CONNELL, *supra* note 39.

naming and knowing feelings are taught to men named as batterers. Batterers meet in quasi-therapeutic settings in which they are encouraged to share their experiences and their feelings and learn to name and understand those feelings. At the same time, women are advised that they have rights and encouraged to use the courts to assert these rights. Contemporary systems of governance focus on providing safety for the woman and on retraining batterers, helping them to name and anticipate their feelings, to see new dimensions of choice for their actions, to value themselves, and to change their beliefs about masculinity and marriage.

The new regime affects men differently from women. It has emancipated women from the governance of their husbands and partners and provided them a more autonomous subjectivity defined by a feminist interpretation of the law as providing them the right not to be battered, no matter what they have done. At the same time, it has reduced men's rights to discipline and control their wives. Men sometimes report surprise, dismay, and anger that things that they could do in the past with impunity now earn them prison sentences and the requirement to attend batterers intervention programs. There is no increase in autonomy or freedom experienced by these men; instead they feel more strongly the effect of new forms of governance, directed not only at punishing them but reforming them, training them in new practices of masculinity and performing gender roles in the family. For many of the women, the entitlement to rights from the law is a new experience, as is the support for their autonomy offered by shelter and program staff and the judiciary. For some of the men, state supervision and control is a familiar experience. Almost a third of the men interviewed had previous arrests and some have long histories with the juvenile and adult courts. Almost half the men in the feminist batterer program have been arrested for something in addition to battering according to intake interviews. Thus, the men brought into the court and the violence control program have experienced the criminal justice system in other areas.

These changes do not fall equally on all social classes or races. Working class and poor women are more likely to use the law for help because they lack expensive alternatives such as private counseling or moving to a new house. Poor men are more likely to end up in the courts and treatment programs. Men with race and class privilege have typically escaped the criminalization of their violence in the home, while psychological and economic violence have not been defined as crimes. Men of higher social classes often escape the feminist training program. In the earlier years, a few were sent to the treatment program and protested loudly about the infringement on their rights. More recently, men with greater means are buying their way out of the violence control program through recourse to private counseling services, counseling through their churches, or perhaps

changing their patterns of battering from physical to more emotional and verbal strategies. They are more likely to hire an attorney. It is not that only poor men batter, but only poor batterers end up in court and ATV. It is impossible to know how much battering remains hidden behind window shades and unreported to the police. There has been a strong challenge to patriarchal authority in this movement, but it is, in effect, predominantly lower class men who feel this challenge.

The right not to be battered and the capacity to make choices are important extensions of the definition of the autonomous self to a relatively poor and marginalized group of women. Those who arrive in court accused of battering are those whose partners or neighbors were willing to complain. Yet, the right of women to complain about violence has come at a cost: women are encouraged or forced to testify against their partners in court, a dangerous and often undesirable form of participation. As the battered women's movement has come to depend on the legal system for support and for funding, it has had to compromise its support for women, to tone down its rhetoric of patriarchy, and to move toward a service delivery system in which its emancipatory potential is compromised by the need to service cases and to get women to testify. In order for women to adopt this new sense of rights, however, their initial forays into the legal arena require experiences of support from participants in that arena as they struggle to redefine a self between the obligations of the good wife and the entitlements of the autonomous self not to be hit. This is a difficult journey that inevitably means hesitation and vacillation.

This analysis suggests that the adoption of a rights consciousness about a particular form of behavior requires a shift in subjectivity, one that depends on wider cultural understandings and individual experience. It is in the particular interactions and encounters of an individual that this subjectivity shift takes place. That the adoption of rights depends on individual experiences in the social world has significance for a range of rights-based social movements from pay equity and mental health rights to human rights. Such adoptions depend not only on educating people about the availability of rights, but also putting into place practices within legal systems that will reinforce the experience of these rights. This reinforcement depends on social encounters in which those endeavoring to exercise rights, and thus redefining their previous relationships, find positive reinforcement for this change. Human rights are difficult for individuals to adopt as a self-definition in the absence of institutions that will take these rights seriously when they are claimed by individuals. Rights cannot precede concerns about implementation. This analysis suggests that implementation is fundamental to establishing human rights consciousness.